

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

JERRY LEON DEES, JR.,

Plaintiff,

v.

**HYUNDAI MOTOR MANUFACTURING
ALABAMA, LLC, and HYUNDAI MOTOR
AMERICA, INC.,**

Defendants.

**CIVIL ACTION NO.:
2:07-cv-00306-MHT-CSC**

**DEFENDANTS' EVIDENTIARY SUBMISSION IN SUPPORT
OF THEIR MOTION FOR SUMMARY JUDGMENT**

Come now Defendants Hyundai Motor America, Inc. and Hyundai Motor Manufacturing Alabama, LLC, (hereinafter "Defendants") and submit this Evidentiary Submission in Support of Their Motion for Summary Judgment. Defendants rely upon the following evidence¹:

Exhibit A	Deposition of Plaintiff Jerry Dees and exhibits
Exhibit B	Deposition of James Brookshire and exhibits (Exhibit 14 filed under seal)
Exhibit C	Deposition of John Wayne Applegate and exhibits (Exhibits 17 – 20 filed under seal)
Exhibit D	Deposition of Wendy Warner
Exhibit E	First Declaration of Wendy Warner

¹ Defendants have filed a Motion to Seal portions of their Evidentiary Submission for the reasons set forth in that Motion. Pursuant to instructions from the Clerk of Court's Office for the Middle District, Defendants filed a paper copy of the documents Defendants seek to seal that are included in their Evidentiary Submission. Defendants also will electronically file references to these documents. Defendants are also serving via e-mail and U.S. Mail a copy of the documents they seek to have sealed.

- Exhibit F Second Declaration of Wendy Warner and exhibits
- Exhibit G Declaration of Rob Clevenger and exhibits
- Exhibit H Declaration of Kathy Parker
- Exhibit I *Hurst v. Cook*, ___ So. 2d ___, 2007 WL 2812150 (Ala. Civ. App. September 28, 2007)
- Exhibit J *Daggett v. Chicago Transit Authority*, 1998 WL 831843 (N.D. Ill. 1998)
- Exhibit K *Byer v. DTG Operations, Inc.*, 2007 WL 2746619 (S.D. Fla. September 18, 2007)
- Exhibit L *Chance v. Dallas Co. Hosp. Dist.*, 1998 DL 177963 (N.D. Tex. 1998)
- Exhibit M *Dees v. Hyundai Motor Mfg. Alabama, LLC*, ___ F.Supp.2d ___, 2007 WL 4215884 (M.D. Ala. November 30, 2007)
- Exhibit N *Church v. City of Reno*, 1999 U.S. App. LEXIS 2068 (9th Cir. Nev. Feb. 9, 1999)
- Exhibit O *McKie v. Miller Brewing Co.*, 1992 WL 150160 (M.D. Ga. March 16, 1992).
- Exhibit P HMMA Letter Terminating the Employment of Jerry Dees dated February 26, 2007 (Bates Labeled 00006 and produced by Defendants on July 17, 2007).

Respectfully submitted this 14th day of December, 2007.

/s/ J. Trent Scofield

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Pro Hac Vice Granted 05/15/07

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Manufacturing Alabama, LLC and
Hyundai Motor America, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December, 2007, I electronically filed the foregoing *Defendants' Evidentiary Submission in Support of Their Motion for Summary Judgment* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: W. Perry Hall, Vincent F. Kilborn, III, David Allen McDonald, Jeffrey Rayborn Sport, T. Scott Kelly, and Matthew K. Johnson.

/s/ J. Trent Scofield

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FREEDOM COURT REPORTING

<p style="text-align: right;">Page 5</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE MIDDLE DISTRICT OF ALABAMA 3 NORTHERN DIVISION 4 5 CASE NUMBER: 2:07-cv-00306-MHT-CSC 6 JERRY LEON DEES, JR., 7 Plaintiff, 8 vs. 9 HYUNDAI MOTOR MANUFACTURING 10 ALABAMA, LLC, and HYUNDAI 11 MOTOR AMERICA, INC., 12 Defendants. 13 BEFORE: 14 ANGELA SMITH MCGALLIARD, Commissioner. 15 APPEARANCES: 16 VINCENT KILBORN, ESQUIRE, of 17 KILBORN, ROEBUCK & MCDONALD, 1810 Old 18 Government Street, Mobile, Alabama 36606, 19 appearing on behalf of the Plaintiff. 20 JEFFREY R. SPORT, ESQUIRE, of 21 KILBORN, ROEBUCK & MCDONALD, 1810 Old 22 Government Street, Mobile, Alabama 36606, 23 appearing on behalf of the Plaintiff.</p>	<p style="text-align: right;">Page 7</p> <p>1 I, ANGELA SMITH MCGALLIARD, RPR, 2 CRR, a Court Reporter of Pike Road, Alabama, 3 acting as Commissioner, certify that on this 4 date, as provided by the Federal Rules of 5 Civil Procedure and the foregoing 6 stipulation of counsel, there came before me 7 at the offices of Freedom Court Reporting, 8 416 S. Perry Street, Montgomery, Alabama 9 36104, beginning at 9:10 a.m., Jerry Leon 10 Dees, Jr., witness in the above cause, for 11 oral examination, whereupon the following 12 proceedings were had: 13 JERRY LEON DEES, JR., 14 being first duly sworn, was examined and 15 testified as follows: 16 MR. KILBORN: Court reporter, 17 can you keep the time for us? 18 COURT REPORTER: Certainly. 19 Usual stipulations? 20 MR. JOHNSON: I assume that 21 means the usual stipulations that we've got 22 in the guidelines -- 23 MR. KILBORN: Witness waives</p>
<p style="text-align: right;">Page 6</p> <p>1 APPEARANCES (continued): 2 MATTHEW K. JOHNSON, ESQUIRE, of 3 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, 4 The Ogletree Building, 300 North Main 5 Street, Greenville, South Carolina 29602, 6 appearing on behalf of the Defendants. 7 CHRISTOPHER N. SMITH, ESQUIRE, of 8 HYUNDAI MOTOR MANUFACTURING ALABAMA, 700 9 Hyundai Boulevard, Montgomery, Alabama 10 36105, appearing on behalf of the 11 Defendants. 12 ALSO PRESENT: Katherine Dees 13 Bobby Hall 14 ***** 15 16 17 18 19 20 21 22 23</p>	<p style="text-align: right;">Page 8</p> <p>1 the reading and signing and all objections 2 except as to the form are reserved until 3 trial. 4 MR. JOHNSON: Sounds fine with 5 me. 6 EXAMINATION 7 BY MR. JOHNSON: 8 Q. Okay, Mr. Dees, my name is 9 Matt Johnson. I practice law at Ogletree, 10 Deakins. And I'm here basically to ask you 11 some questions about yourself and about this 12 case, and what you know about this case, and 13 other people that might know about the case. 14 This may seem like a fairly 15 formal proceeding, but I'm sort of here to 16 have a conversation with you and just ask 17 you questions. 18 Let me tell you up front, 19 occasionally I'm thinking two or three 20 questions down the line; and for better or 21 for worse, sometimes I ask questions that 22 don't make sense, and I apologize. If I do 23 that, I want you to stop me, and let me know</p>

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<p style="text-align: right;">Page 9</p> <p>1 that. Don't be embarrassed. I'm fairly 2 thick skinned; and if I don't make sense or 3 my questions don't make sense, that's okay 4 with me. You just let me know because I 5 just want to make sure you're comfortable 6 and that you're answering questions that you 7 understand. Okay? 8 A. I'll do it. 9 Q. And the other thing, our court 10 reporter here is typing up everything that 11 we say. And she's probably got one of the 12 harder jobs of any of us today, so we want 13 to make her job as easy as we can. The best 14 way to do that is to make sure we speak up 15 loud and clear. Okay? 16 A. Roger. 17 Q. And if you can, Roger may 18 work, assuming that means yes. But I'd 19 prefer, and I'm sure our court reporter 20 would prefer it if you could say yes or no. 21 Is that okay? 22 A. Yes. 23 Q. Again, nods, shrugs of the</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. And you swear to tell the 2 truth? 3 A. Whole truth, nothing but the 4 truth, so help me God. 5 Q. Okay. And are you on any 6 medication that would prohibit you from 7 understanding me or my questions? 8 A. No, sir. 9 Q. Are you on any medication that 10 would prohibit you from being able to answer 11 truthfully and accurately? 12 A. I'm not on any type of 13 medication. 14 Q. Thank you. 15 If you would give me your full 16 name, including your middle name. 17 A. Jerry Leon Dees, Junior. 18 Q. Have you ever gone by any 19 other names? 20 A. No, sir. Yeah. Staff 21 sergeant. 22 Q. What's your date of birth? 23 A. [REDACTED] '65.</p>
<p style="text-align: right;">Page 10</p> <p>1 shoulders, things of that nature are 2 difficult for her to write up, so make sure 3 everything you want to get across to me or 4 to her is in loud, clear, spoken English. 5 Okay? 6 A. No problem. 7 Q. I appreciate it. 8 And this is not an endurance 9 contest. It's probably going to take longer 10 than you or I want it to, but that's just 11 the way it goes, and I apologize in advance. 12 What I want to make sure you understand is 13 that you can take a break whenever you want 14 to; you can try to get something to drink if 15 we can find something; you can use the 16 restroom; you can stand up and walk around 17 as you'd like. Okay? 18 A. Yes, sir. 19 Q. Okay. Finally, I just want to 20 make sure before we get started into the 21 heart of things that you understand this is 22 sworn testimony? 23 A. Yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Where were you born? 2 A. [REDACTED], Alabama. 3 Q. [REDACTED]? 4 A. Yes, sir. 5 Q. Where is that? 6 A. [REDACTED] County. 7 Q. What's that near? 8 MR. SPORT: It's an hour north 9 of here. 10 A. It's out in the middle of the 11 woods. 12 (Off-the-Record discussion 13 was held.) 14 Q. What's your current address? 15 A. [REDACTED], 16 [REDACTED], Alabama [REDACTED]. 17 Q. And do you own a house -- Is 18 that a house? 19 A. Yes, sir. 20 Q. Do you own it or rent it? 21 A. Well, the bank owns it right 22 now. Give me about thirteen more years, and 23 I might own it.</p>

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<p>1 Q. Do you have any secondary 2 residences? 3 A. Yeah. The armory one weekend 4 a month. 5 Q. And where do you work 6 currently? 7 A. International Paper, 8 Prattville Mill. 9 Q. What do you do at the 10 Prattville mill? 11 A. Millwright, maintenance. 12 Q. How long have you been there? 13 A. Few months. 14 Q. Okay. Do you remember which 15 month you started? 16 A. Approximately four months ago. 17 Q. Okay. And when you started 18 there four months ago, were you doing 19 millwright/maintenance? 20 A. Yes, sir. 21 Q. And prior to that, where did 22 you work? 23 A. BE&K Construction Company at</p>	<p>1 A. Maintenance supervisor. 2 Q. Who is Neil Causey's boss? 3 A. I have no idea. 4 Q. Okay. 5 A. I haven't been there in a 6 month. I've been at an Army school for the 7 last month, so I don't know. 8 Q. Okay. What kind of Army 9 school have you been at? 10 A. BNCOC Phase II and III, Staff 11 NCO Advanced Leadership School. 12 Q. Now, one thing I want to ask 13 you to do, both for my sake and for our 14 court reporter's sake. I know throughout 15 this deposition we're going to refer to a 16 lot of Army terms, and say them slow or 17 spell them or do whatever you can to make 18 sure it gets on the Record clearly. 19 A. It's B-N-C-O-C, Basic 20 Noncommissioned Officers Course. 21 Q. Okay. If you can, I know you 22 guys use a lot of abbreviations and stuff, 23 for purposes of this, if you could make sure</p>
Page 14	Page 16
<p>1 that mill. 2 Q. At the Prattville mill? 3 A. Yes, sir. 4 Q. What were you doing for BE&K? 5 A. Millwright, millwright and 6 welder. 7 Q. Was that different than what 8 you're doing now? 9 A. Not really, no. 10 Q. Prior to BE&K where was the 11 last place you worked? 12 A. Hyundai. 13 Q. Do you remember what month you 14 started work at BE&K? 15 A. 27 February '07. 16 Q. Okay. And who is your 17 supervisor at the Prattville mill? 18 A. Neil Causey. 19 Q. Can you spell Causey? 20 A. Causey, C-A-U-S-E-Y, I 21 believe. I'm not sure. 22 Q. Okay. What is his position at 23 the mill?</p>	<p>1 and give us the full, plain spoken English. 2 A. No acronyms? 3 Q. Just define them before you 4 start using them. Okay? 5 A. All right. 6 Q. Tell me, what is your Social 7 Security number? 8 A. [REDACTED]. Why? 9 Q. You say why -- Why did I ask? 10 A. Yes, sir. 11 Q. Well, because I'm taking your 12 deposition. 13 And your driver's license 14 number? 15 A. [REDACTED]. 16 Q. Is that an Alabama license? 17 A. Yes, sir. 18 Q. Is it restricted in any way? 19 A. Negative. 20 Q. Okay. You don't wear glasses? 21 A. No, sir. 22 Q. And I'm assuming -- We have 23 some other people here today, and I'm</p>

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1 assuming one of them is your wife?
 2 A. Yes, sir.
 3 Q. Okay. And what is her name?
 4 A. [REDACTED].
 5 Q. [REDACTED] with a K?
 6 A. [REDACTED], Yun, Y-U-N,
 7 Dees.
 8 Q. How long have y'all been
 9 married?
 10 A. Twenty-two years.
 11 Q. And where is she from?
 12 A. [REDACTED].
 13 Q. And prior to Mrs. Dees that's
 14 here with us today, have you ever been
 15 married before?
 16 A. No, sir.
 17 Q. Do you and Mrs. Dees have any
 18 children?
 19 A. Two.
 20 Q. What are their names?
 21 A. [REDACTED], [REDACTED],
 22 common spelling, Dees; [REDACTED], [REDACTED],
 23 [REDACTED], common spelling, Dees.

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1 Q. How old are [REDACTED] and
 2 [REDACTED]?
 3 A. Twenty-one and sixteen --
 4 seventeen. She just had a birthday.
 5 Q. I assume those are the only
 6 two children you have?
 7 A. Roger. Yes, sir.
 8 Q. Okay. Do you have other
 9 relatives by blood or marriage that live in
 10 Alabama?
 11 A. A lot of them.
 12 Q. You do?
 13 A. Yes, sir.
 14 Q. Tell me the names or towns
 15 where they might live.
 16 A. Oh, God.
 17 Q. Let me explain why I'm asking.
 18 At some point we may have to pick a jury in
 19 this case, I don't want your cousin, aunt,
 20 or uncle sitting on the jury.
 21 A. You're probably out then.
 22 I've got relatives all over the state, all
 23 the way up to South Carolina, Fort Bragg,

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1 all the way out to California.
 2 Q. I'm only interested in the
 3 ones in Alabama.
 4 A. Well, I don't know.
 5 Q. You can give me their last
 6 names, can't you?
 7 A. Yeah. Dees, Mobley,
 8 Patterson, Bates, Peek. Heck I could go on
 9 all day. I don't know.
 10 Q. How do you spell Peek?
 11 A. P-E-E-K.
 12 Q. I'm assuming this jury will be
 13 drawn from people that live somewhere in
 14 proximity to Montgomery. Do most of your
 15 relatives live in and around Montgomery?
 16 A. I have some in Montgomery but
 17 not most of them, no. Like I said, they're
 18 scattered throughout the state.
 19 Q. The ones that live in
 20 Montgomery, can you give me the names of
 21 some of the ones that live in or around
 22 Montgomery. By the way, I need you to
 23 answer.

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1 A. I'm trying -- She knows more
 2 of my family than I do. I grew up in
 3 Alabama, but all I do is work.
 4 MR. KILBORN: You can't talk
 5 to Katherine. He just wants to know what
 6 you know.
 7 A. Distant cousins, no, I don't
 8 know them.
 9 Q. I'm assuming you're a U.S.
 10 citizen?
 11 A. Yes, sir.
 12 Q. Did you graduate from high
 13 school?
 14 A. Clay County High School,
 15 Ashland, Alabama.
 16 Q. And when did you graduate?
 17 A. May '83.
 18 Q. And did you go to college?
 19 A. Some college.
 20 Q. Where?
 21 A. Didn't graduate. Through the
 22 military, University of Maryland, Wallace
 23 Community College in Selma, and J.P. Tech.

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<p style="text-align: right;">Page 21</p> <p>1 Q. J.P. Tech?</p> <p>2 A. Yeah. It's Faulkner now, I</p> <p>3 believe.</p> <p>4 Q. Say that again.</p> <p>5 A. They changed the name to</p> <p>6 Faulkner.</p> <p>7 Q. Faulkner Tech?</p> <p>8 A. I'm not sure what it is. It</p> <p>9 was John Patterson Technical College when I</p> <p>10 went there.</p> <p>11 Q. Okay. You mentioned one in</p> <p>12 between the military University of Maryland</p> <p>13 and J.P. Tech, what was that?</p> <p>14 A. Wallace Community College,</p> <p>15 Selma.</p> <p>16 Q. And you did not get a degree</p> <p>17 from any of those three institutions?</p> <p>18 A. No, sir.</p> <p>19 Q. And what did you study at the</p> <p>20 military University of Maryland?</p> <p>21 A. It wasn't military. It was</p> <p>22 the University of Maryland, when I was in</p> <p>23 the military.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Wallace was welding.</p> <p>2 Q. In welding, can you get some</p> <p>3 sort of certification for that?</p> <p>4 A. Yes, sir, if you stay there</p> <p>5 the whole two years.</p> <p>6 Q. All right.</p> <p>7 A. I had a family to feed, I</p> <p>8 couldn't afford to stay there the whole two</p> <p>9 years.</p> <p>10 Q. So you did not become</p> <p>11 certified?</p> <p>12 A. No, sir.</p> <p>13 Q. And you're doing some welding</p> <p>14 now at the Prattville mill?</p> <p>15 A. When it -- When it arises,</p> <p>16 yes, sir.</p> <p>17 Q. Okay. Is that something that</p> <p>18 you would need to be certified for?</p> <p>19 A. I got certified through one of</p> <p>20 the companies I worked for. But as far as</p> <p>21 actual certification, unless you're welding</p> <p>22 on a boiler, or any type of military</p> <p>23 equipment, stuff like that, no, you don't --</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. Got it.</p> <p>2 A. Just core, basics, science,</p> <p>3 English, math.</p> <p>4 Q. And at J.P. Tech or Faulkner?</p> <p>5 A. Maintenance program.</p> <p>6 Q. How much time did you spend at</p> <p>7 the University of Maryland?</p> <p>8 A. I don't know. Depends on how</p> <p>9 often I was deployed. I don't know, maybe a</p> <p>10 year. I don't know. I mean, it was off and</p> <p>11 on. It wasn't on a campus. Military brings</p> <p>12 instructors in to the bases and the posts,</p> <p>13 and you'll meet at a building there. And I</p> <p>14 had a certified college instructor, and</p> <p>15 that's where you had the classes. I was</p> <p>16 never on the campus, except for J.P. Tech</p> <p>17 and Wallace.</p> <p>18 Q. What kind of maintenance did</p> <p>19 you study at J.P. Tech?</p> <p>20 A. Hydraulics, pneumatics,</p> <p>21 electrical, blueprint reading, basic</p> <p>22 maintenance technician studies.</p> <p>23 Q. Okay. What about --</p>	<p style="text-align: right;">Page 24</p> <p>1 If it's a pressurized vessel, you need a</p> <p>2 certification; if it's not pressurized or</p> <p>3 done to code -- some code you can get by</p> <p>4 welding without a certification, like on</p> <p>5 water tanks and stuff, you just have be able</p> <p>6 to pass X-rays.</p> <p>7 Q. Okay. But now you're</p> <p>8 certified?</p> <p>9 A. Well, I don't know if it is</p> <p>10 still current or not to be honest. It was</p> <p>11 before I went to work for Hyundai.</p> <p>12 Q. Who were you working with?</p> <p>13 A. Sim-Cala.</p> <p>14 Q. Sim-Cala. Other than the</p> <p>15 schooling you got at University of Maryland,</p> <p>16 J.P. Tech, Wallace Community College in</p> <p>17 Selma, have you attended any other classes</p> <p>18 or seminars since you got out of high</p> <p>19 school?</p> <p>20 A. Just the classes that</p> <p>21 International Paper sent all their</p> <p>22 maintenance people to.</p> <p>23 Q. Okay. What was that?</p>

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<p style="text-align: right;">Page 25</p> <p>1 A. Well, I mean, same thing. We 2 got precision skilled craftsman classes, 3 it's a forty- or eighty-hour class, I can't 4 remember. Same thing, hydraulic classes, 5 welding classes. 6 Q. And did IP pay for that? 7 A. Yes. 8 Q. And did they pay you for your 9 time away from work or how did that work? 10 A. Instead of going to work, we 11 went to the schools. 12 Q. You got paid for the time? 13 A. Yes, sir. 14 Q. And how many hours was that? 15 A. Altogether at different 16 schools, I have no idea. I mean, skilled 17 craftsman class was just one school. We 18 went to the same thing just like J.P. Tech, 19 blueprint reading classes, hydraulics. It 20 could go anywhere from a day to two or three 21 weeks, depending on what class it was. That 22 was several years back. 23 Q. That was at -- I think you</p>	<p style="text-align: right;">Page 27</p> <p>1 A. I believe so. 2 Q. And during the time period 3 that you were at the Thorsby mill, what did 4 you do? 5 A. I started out as just a 6 regular maintenance man. And when I left, I 7 was a maintenance leadman. 8 Q. And what does a maintenance 9 leadman do? 10 A. Schedules the work for all the 11 other shifts, for the -- all four 12 maintenance shifts we had; I was in charge 13 of the major projects; I basically handled 14 everything while the supervisor just took 15 care of all the paperwork. 16 Q. Okay. 17 A. All the major calls, I'd 18 respond to the major breakdowns, decide what 19 action we was going to take, let the 20 supervisor know what was going on, and go 21 from there. 22 Q. Was that similar to what you 23 were doing at Hyundai?</p>
<p style="text-align: right;">Page 26</p> <p>1 worked at International Paper before you 2 came to Hyundai? 3 A. Yes, sir. 4 Q. Okay. Let's go back and talk 5 about your employment history before 6 Hyundai. Do you remember when you started 7 with Hyundai? 8 A. It was either 19 or 21 9 November '05. 10 Q. All right. Let's walk 11 backwards. Where were you working until 12 November of '05? 13 A. International Paper, Thorsby. 14 Q. I'm sorry? 15 A. I was at a different mill than 16 I am now. I was at the Thorsby mill. 17 Q. How do you spell Thorsby? 18 A. T-H-O-R-S-B-Y. 19 Q. How long were you at the 20 Thorsby mill? 21 A. Six years. 22 Q. Do you remember -- So you 23 would have started in '99?</p>	<p style="text-align: right;">Page 28</p> <p>1 A. No, sir. 2 Q. Okay. How was it different? 3 A. At Hyundai I was just a 4 regular maintenance technician. 5 Q. You said you had done regular 6 maintenance at the Thorsby mill also? 7 A. Yes, sir. 8 Q. Was what you were doing at the 9 Thorsby mill consistent with what you were 10 doing at Hyundai? 11 A. Yes, sir. 12 Q. Tell me what you were doing at 13 the Thorsby mill as a regular maintenance 14 person? 15 A. Same thing, answer calls; work 16 orders that came down, I'd handle them; 17 breakdowns; break-ins; welding; hydraulics; 18 pneumatics; electrical; just regular 19 maintenance work. 20 Q. But what you were doing at the 21 Thorsby mill was essentially the same as 22 what you were later doing at Hyundai? 23 A. Yes, sir. Basically.</p>

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<p style="text-align: right;">Page 29</p> <p>1 Q. How much were you getting paid 2 at Thorsby mill for maintenance? 3 A. Fifteen -- No. I topped out 4 -- I went to the pay for skills program, it 5 was eighteen something. 6 Q. Per hour? 7 A. Yes, sir. I started out at 8 fifteen, and topped out at eighteen 9 something. 10 Q. And what about as a 11 maintenance leadman? 12 A. Twenty dollars, little over 13 twenty dollars. 14 Q. How long did you work as a 15 maintenance leadman? 16 A. Approximately three years, I 17 believe. I think. I'm not sure. 18 Q. Okay. Who -- As a -- When you 19 were a regular maintenance tech, who was 20 your supervisor? 21 A. John Allen. 22 Q. Allen? 23 A. A-L-L-E-N.</p>	<p style="text-align: right;">Page 31</p> <p>1 to have, better benefits. Had better 2 benefits there than any place I've ever had, 3 even in the military. 4 Q. Okay. 5 A. Better pay. Like I say, that 6 was the job to have. 7 Q. When you say job to have, you 8 mean generally in the community, or just for 9 you personally? 10 A. No. Everywhere around where I 11 lived, it was either Mercedes or Hyundai, 12 everybody was wanting to go to one of the 13 two. 14 Q. Okay. 15 A. They both had outstanding 16 benefits, the work conditions weren't near 17 as rigorous as what we had. It was in a 18 controlled environment, air conditioned in 19 the summer, heated in the winter. And pay, 20 pay was a lot better than any wood yard you 21 were going to work on. 22 Q. Okay. Did you know anybody 23 that was working for Hyundai before you went</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. And when you were a 2 maintenance leadman, who was your 3 supervisor? 4 A. John Allen. 5 Q. What was his role? 6 A. He was a maintenance 7 supervisor on the old part of the mill. 8 There was two parts to the mill, we had an 9 old part and a new part, and he had 10 everything on the old side. 11 Q. Okay. And how much -- When 12 you started at Hyundai, what were you making 13 per hour? 14 A. Nineteen fifty-six. 15 Q. What were you making when you 16 left? 17 A. Twenty-three thirty-five. 18 Q. And what were the 19 circumstances of you leaving the Thorsby 20 mill? Why did you leave? 21 A. Go to work for Hyundai. 22 Q. Okay. 23 A. That was a -- That was the job</p>	<p style="text-align: right;">Page 32</p> <p>1 to work there? 2 A. Yes, sir. A couple of 3 production people from the mill I worked at 4 had gotten jobs down there in production. 5 Q. Who was that? 6 A. Lamar Powell; I can't remember 7 Mike's last name. Mike somebody, I can't 8 remember his last name. And another guy we 9 called him Scooby, I don't know his real 10 name. 11 Q. Okay. Scooby? 12 A. Yes, sir. 13 Q. Okay. Did you talk to Lamar 14 Powell or Mike or Scooby about coming to 15 work for Hyundai before you came? 16 A. No, sir. When we left the 17 plant -- They probably left the plant six 18 months before I got hired on there. The 19 hours they were working, nobody talked to 20 them. 21 Q. Okay. They were working -- 22 A. Long hours. 23 Q. Okay. What -- Once you came</p>

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Page 33	Page 35
<p>1 to work for Hyundai, did you talk to Lamar 2 Powell or Mike or Scooby? 3 A. Scooby, no. Lamar and Mike, a 4 couple of times. 5 Q. Okay. Did you talk to them 6 about your military career or uniformed 7 service or anything like that as -- 8 A. They asked was I going back to 9 Iraq any time soon, and I told them I didn't 10 know. 11 Q. Okay. Anything else y'all 12 talked about in terms of your military 13 career? 14 A. Asked me was I still in, yeah. 15 Q. I assume they were not members 16 of the Guard? 17 A. No, sir. 18 Q. Did you talk to them about 19 Greg Prater at all? 20 A. No, sir. 21 Q. Did you talk to them about 22 Kevin Hughes at all? 23 A. No, sir.</p>	<p>1 A. At the foundry? 2 Q. Uh-huh. 3 A. Maintenance. It was more 4 welding than anything. 5 Q. Okay. And give me your dates 6 of employment at Sim-Cala. 7 A. I don't know. I mean, I don't 8 know. That was years ago. 9 Q. Okay. 10 A. I don't know. 11 Q. Okay. Do you remember who 12 your supervisor was? 13 A. Huh-uh. I can't remember his 14 name. He was a short fellow. I can't 15 remember his name. 16 Q. Okay. Did you have any sort 17 of on-the-job training with Sim-Cala? 18 A. Yeah. They're the ones that 19 sent me to J.P. Tech. You had to go to J.P. 20 Tech. And, no, I wasn't paid. 21 Q. Did they send you at night? 22 A. Yes, sir. I had to complete 23 my ten-hour work shift, then go to school.</p>
Page 34	Page 36
<p>1 Q. Did you talk to them about 2 John Applegate at all? 3 A. I don't think so. 4 Q. Okay. 5 A. I'd see them -- They worked 6 production, they was on the line. You may 7 get to talk to them a minute at the most, 8 because they don't stop the line. Because 9 if the line stops, it ain't good. 10 Q. Okay. And going back to your 11 employment history, let's talk about your 12 work prior to going to IP at the Thorsby 13 mill. Where did you work before that? 14 A. Sim-Cala. 15 Q. And what did you do at 16 Sim-Cala? 17 A. Maintenance. 18 Q. And when you say maintenance, 19 were you doing basically the same thing you 20 were doing as a regular maintenance person 21 at the IP Thorsby mill? 22 A. Yes and no. It was a foundry. 23 Q. And what were you doing there?</p>	<p>1 Q. Okay. And what was the reason 2 for the termination of the position at 3 Sim-Cala? 4 A. Wasn't termination. I quit -- 5 left there to go to International Paper. 6 Q. Why? 7 A. Better pay. I mean, make a 8 better living for my family. 9 Q. Anything other than better 10 pay? 11 A. Yeah. We didn't have good 12 insurance. I mean, that was -- Sim-Cala was 13 a rough job. I mean, it was a rough job. 14 Even in the winter time, it was a 15 hundred-some-odd degrees in the plant. 16 Don't nobody want to work there. 17 Q. Okay. Is it still in 18 business? 19 A. I have no idea. 20 Q. Where was Sim-Cala? 21 A. Off the Mt. Meigs exit here in 22 Montgomery. 23 Q. Mt. Meigs?</p>

9 (Pages 33 to 36)

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Page 37	Page 39
<p>1 A. Uh-huh.</p> <p>2 Q. And prior to Sim-Cala, where</p> <p>3 did you work?</p> <p>4 A. Miller Mechanical. It is a</p> <p>5 company out of New York.</p> <p>6 Q. What did you do for them?</p> <p>7 A. Worked shutdowns in paper</p> <p>8 mills.</p> <p>9 Q. So you traveled for that?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Were you married then?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Imagine that was rough?</p> <p>14 A. Yes, sir.</p> <p>15 Q. How long were you with them?</p> <p>16 A. Several years.</p> <p>17 Q. Do you remember what years?</p> <p>18 A. No, sir. To be honest, no.</p> <p>19 Q. And what -- you say you did --</p> <p>20 you traveled and did shutdowns for Miller</p> <p>21 Mechanical?</p> <p>22 A. Yeah.</p> <p>23 Q. Tell me what that involved.</p>	<p>1 (Whereupon, Defendant's</p> <p>2 Exhibit No. 1 was marked</p> <p>3 for identification.)</p> <p>4 (Off-the-Record discussion</p> <p>5 was held.)</p> <p>6 Q. Mr. Dees, what we've marked as</p> <p>7 Exhibit 1 to your deposition, you agree</p> <p>8 that's your resume?</p> <p>9 A. Starting at the top?</p> <p>10 Q. Sure.</p> <p>11 A. All right. Projective,</p> <p>12 employment with Hyundai Corporations --</p> <p>13 Q. No. No. No. You don't have</p> <p>14 to read it. Just look at it and tell me if</p> <p>15 that is what it looks like.</p> <p>16 A. Yes, sir.</p> <p>17 Q. That was your resume?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And to your knowledge, was</p> <p>20 that the one that you submitted to Hyundai</p> <p>21 when you applied?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. That's all I've got to</p>
Page 38	Page 40
<p>1 A. We worked in the pulp</p> <p>2 divisions. We did everything from changing</p> <p>3 out motors, pumps, welding in the digesters,</p> <p>4 changing screens out. Anything to do in the</p> <p>5 pulp division, we did it.</p> <p>6 Q. Okay. And prior to Miller</p> <p>7 Mechanical, do you remember where you</p> <p>8 worked?</p> <p>9 A. I think it was just military</p> <p>10 there.</p> <p>11 Q. Just in the military?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. Mr. Dees, let me give</p> <p>14 you what we have been provided by your</p> <p>15 attorneys. I'm assuming this is your</p> <p>16 resume?</p> <p>17 A. Yes, sir.</p> <p>18 Q. If you see down at the bottom</p> <p>19 it says Dees V. HMMA 00013.</p> <p>20 MR. KILBORN: Do you want to</p> <p>21 go ahead and mark it.</p> <p>22 MR. JOHNSON: Yeah, let's go</p> <p>23 ahead and mark it.</p>	<p>1 ask on that one.</p> <p>2 All right. Mr. Dees, let's</p> <p>3 talk a little bit about your background in</p> <p>4 the military. I think you said your</p> <p>5 employment prior to Miller Mechanical was</p> <p>6 basically in the military. So let's take</p> <p>7 it, I guess, from the bottom. You got out</p> <p>8 of high school and went in the military?</p> <p>9 A. No, sir. I went to basic</p> <p>10 training before I ever graduated. Army</p> <p>11 Basic Training, Fort McClellan, Alabama.</p> <p>12 Q. Okay. And when did you do</p> <p>13 basic?</p> <p>14 A. Summer of '82. Between my</p> <p>15 junior and senior year of high school.</p> <p>16 Q. Okay. And is Fort McClellan,</p> <p>17 is that an Army base?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And so then you did basic</p> <p>20 training in the summer and then went back</p> <p>21 and finished high school?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. Then when you got out</p>

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<p style="text-align: right;">Page 41</p> <p>1 of high school, did you go back into the 2 Army? 3 A. No, sir. I went to basic 4 training for the Army National Guard. 5 Q. That's what you did in the 6 summer of '82? 7 A. Yes, sir. 8 Q. Okay. Well, talk me through 9 your military career, starting the summer of 10 '82. 11 A. Summer of '82, basic training, 12 Fort McClellan, Alabama. 13 Q. Okay. 14 A. Summer of '83, Lackland Air 15 Force Base. Left the guard, went to the Air 16 Force. Army wouldn't let me be an MP and 17 that's what I wanted to do, that or 18 infantry, and they wouldn't let me go either 19 one so I went to the Air Force. Went to the 20 Air Force as an MP school. 21 Q. Okay. When did you do that? 22 A. '83. 23 Q. All right. Did you have to do</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. Okay. 2 A. M-60 machine gun nonspecialist 3 school, then M-60 machine gun specialist, 4 that was another four weeks. 5 Q. The machine gun nonspecialist 6 school? 7 A. Was two weeks. And the 8 specialist school was two weeks. Four weeks 9 to be a machine gunner. 10 Q. Where was this school? 11 A. Camp Bullis. 12 Q. And the specialist school was 13 also at Bullis? 14 A. Camp Bullis. 15 Q. And that took four weeks? 16 A. Four weeks for the total of 17 both of them, two weeks apiece. 18 Q. Then after you completed the 19 machine gun specialist school, what did you 20 do? 21 A. Went to Lackland Air Force 22 Base, Florida. 23 Q. What did you do there?</p>
<p style="text-align: right;">Page 42</p> <p>1 basic training for the Air Force too? 2 A. No, sir. I'd have probably 3 got kicked out, probably. 4 Q. Why is that? 5 A. I can't fold clothes in 6 sixteen squares. 7 Q. Okay. So you did the MP 8 school in '83? 9 A. Yes, sir. 10 Q. Okay. How long did that take? 11 A. Eight weeks, I believe. 12 Q. What did you do after that 13 eight weeks? 14 A. Ground combat skills training. 15 Q. Where? 16 A. Camp Bullis, Texas. 17 Q. How do you spell that? 18 A. C-A-M-P B-U-L-L-I-S. 19 Q. How long did ground combat 20 skills training take? 21 A. I don't know. Around eight 22 weeks, I think. Six, eight weeks, I don't 23 know.</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Went to school a lot, stayed 2 in the woods a lot; got certified on a 3 radar, Intoxilizer, Breathalyzer; a lot of 4 exercises, deployment exercises in the 5 woods; and I worked a lot of gates. 6 Q. All right. When you say you 7 were in school, I assume that was learning 8 stuff like how to operate radar, how to 9 operate Breathalyzer? 10 A. Competitions. I shot 11 competitions for the Air Force. Combat 12 competitions, peace keeper challenge. 13 Q. Okay. And when you say you 14 were in the woods a lot, I assume that was 15 all training? 16 A. Yes, sir. 17 Q. Okay. What kind of training 18 were you doing? 19 A. Ground combat skills. 20 Q. Okay. 21 A. I had some -- I had prior Army 22 training, and the Air Force don't really 23 have a lot of combat training so they</p>

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<p style="text-align: right;">Page 45</p> <p>1 utilize on the other branches, Army and 2 Marine Corps combat courses. So that's why 3 I got stuck back in the woods. 4 Q. When you say you worked a lot 5 of gates, does that mean doing security at 6 gates? 7 A. Yes, sir. 8 Q. I assume that's because you 9 were an MP? 10 A. Yes, sir. 11 Q. And technically were -- At 12 what point did you become an MP, when you 13 finished MP school in '83? 14 A. Yes, sir. 15 Q. All this other stuff, the 16 ground combat skills training, machine gun 17 training, that was all to sort of further 18 your education as an MP? 19 A. Not really. 20 Q. Okay. 21 A. Air Force is responsible for 22 their own perimeter security, in the States 23 and overseas. And being as I had prior Army</p>	<p style="text-align: right;">Page 47</p> <p>1 I did a lot of SWAT recalls, worked town 2 patrol some, team spirit, got stuck in the 3 woods a lot, again. And that was it. 4 Q. What are SWAT recalls? 5 A. SWAT team. I was on the 6 military SWAT team. They call it a special 7 reaction team, SRT. That's their version of 8 the SWAT team. 9 Q. And what did you do? 10 A. I was an entry man, first one 11 in the door. 12 Q. That would be like if there 13 was a hostage or crisis -- 14 A. Hostage situation, bank 15 robbery, anything you call a civilian SWAT 16 team for, that's what we was for. 17 Q. Okay. And town patrol, is 18 that what it sounds like? 19 A. Yes, sir. 20 Q. I assume you just made sure 21 that other members of the military weren't 22 causing trouble, things like that? 23 A. You worked strictly at night</p>
<p style="text-align: right;">Page 46</p> <p>1 service, that's where I got stuck. 2 Q. Why is that? 3 A. Because they thought I was a 4 grunt, so I went back to being a grunt. 5 Q. Okay. And how long were you 6 at Lackland? 7 A. Approximately a year I 8 believe. 9 Q. What year was that? Was that 10 in '83 or '84 or both? 11 A. '84 to '85, I believe. 12 February of '84 to maybe February of '85, 13 January of '85. I don't know. 14 Q. After Lackland, where did you 15 go? 16 A. Korea. 17 Q. How long were you in Korea? 18 A. Twelve months. 19 Q. 1985 through '86? 20 A. February of '85 to February of 21 '86. 22 Q. What did you do in Korea? 23 A. I was on the SWAT team there.</p>	<p style="text-align: right;">Page 48</p> <p>1 patrolling local towns, walking through the 2 bars, off-limits areas, make sure the GIs 3 wasn't in the off-limits areas, things of 4 that nature. 5 Q. And you say you got stuck in 6 the woods some more, what were you doing, 7 training? 8 A. Team spirit exercises and 9 training exercises. 10 Q. What are team spirit 11 exercises? 12 A. There was a big military 13 buildup in Korea around every February or 14 March to show military strength without 15 all-out war. 16 Q. Okay. And that was the team 17 spirit exercise? 18 A. Yes, sir. 19 Q. Okay. What else did you do 20 while you were in Korea? 21 A. Got married. 22 Q. I guess that's a big deal? 23 A. Yes, sir.</p>

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<p>1 Q. When did you get married?</p> <p>2 A. 28 June '85.</p> <p>3 Q. My wife would be happy if I</p> <p>4 could reel off those dates as quick as you</p> <p>5 do.</p> <p>6 Did y'all get married actually</p> <p>7 in Korea?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Anything else that you did</p> <p>10 while you were in Korea?</p> <p>11 A. No. I don't know. That was</p> <p>12 years ago. Maybe, maybe not. I don't know.</p> <p>13 I don't remember.</p> <p>14 Q. All right. You came back to</p> <p>15 the states in '86?</p> <p>16 A. Yes, sir. Fort Lewis,</p> <p>17 Washington.</p> <p>18 Q. Fort Lewis?</p> <p>19 A. Yes. Tacoma, Washington.</p> <p>20 Q. That's an Air Force base?</p> <p>21 A. That's an Army post.</p> <p>22 Q. How did you get put on an Army</p> <p>23 post?</p>	<p>1 Q. How long were you at Bitburg?</p> <p>2 A. Three, three and a half years.</p> <p>3 I don't know.</p> <p>4 Q. I assume your wife was</p> <p>5 traveling with you at Fort Lewis and</p> <p>6 Bitburg?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And had y'all had any kids by</p> <p>9 the time --</p> <p>10 A. My oldest daughter was born on</p> <p>11 Fort Lewis, Madigan Army Medical Center.</p> <p>12 Q. How do you spell Madigan?</p> <p>13 A. M-A-D-I-G-A-N. And my</p> <p>14 youngest daughter was born in Germany.</p> <p>15 Q. Okay. And when did you leave</p> <p>16 Bitburg?</p> <p>17 A. August '92. August, September</p> <p>18 '92, I'm not sure.</p> <p>19 Q. Now, around that time was</p> <p>20 during, I guess, the first Gulf War?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Were you deployed over in the</p> <p>23 Middle East during that period?</p>
Page 50	Page 52
<p>1 A. Being an MP.</p> <p>2 Q. Okay. Did you serve as an MP</p> <p>3 at Fort Lewis?</p> <p>4 A. Yes, sir.</p> <p>5 Q. How long?</p> <p>6 A. Was on a SWAT team three</p> <p>7 years. Was on their SWAT team, completed</p> <p>8 Washington State SWAT School, their state</p> <p>9 certified school.</p> <p>10 Q. Those three years were 1986</p> <p>11 through when?</p> <p>12 A. '89.</p> <p>13 Q. '89?</p> <p>14 A. March of '86 through May or</p> <p>15 June of '89.</p> <p>16 Q. Okay.</p> <p>17 A. Germany.</p> <p>18 Q. You went to Germany after Fort</p> <p>19 Lewis?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Where in Germany?</p> <p>22 A. Bitburg Air Base,</p> <p>23 B-I-T-B-U-R-G.</p>	<p>1 A. Yes, sir. Desert Storm.</p> <p>2 Desert Shield and Desert Storm. I was there</p> <p>3 for both phases.</p> <p>4 Q. What were you doing during</p> <p>5 Desert Storm?</p> <p>6 A. Combat patrols.</p> <p>7 Q. What did that involve?</p> <p>8 A. Security patrols, recons,</p> <p>9 raids, ambushes, just basic combat patrol.</p> <p>10 Q. Where were you?</p> <p>11 A. Turkey, northern Iraqi border.</p> <p>12 We traveled from -- what's the name of that</p> <p>13 Air Force base? We traveled from some Air</p> <p>14 Force base over the Turkish border, did</p> <p>15 patrols and back. I don't remember the name</p> <p>16 of the base.</p> <p>17 Q. Okay. What about -- Were you</p> <p>18 anywhere else during Desert Storm?</p> <p>19 A. No, sir.</p> <p>20 Q. Okay. What about during</p> <p>21 Desert Shield, what were you doing?</p> <p>22 A. Same thing. It all rolled one</p> <p>23 into the other.</p>

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1 Q. Same place?

2 A. Only thing that changed for us

3 was the name.

4 Q. Okay. How long were you over

5 in the Middle East?

6 A. Little over three months.

7 Three months, I don't know. It wasn't long.

8 Air Force deploys three months. They're not

9 like the Army.

10 Q. Okay. And then I assume you

11 came back to Bitburg?

12 A. Yes, sir.

13 Q. Okay. And then after Bitburg,

14 where did you go?

15 A. Got out.

16 Q. Got out of the Air Force?

17 A. Yes, sir.

18 Q. All right.

19 A. Stayed out for a while and

20 joined the National Guard.

21 Q. Do you remember when you --

22 when you got out of the Air Force?

23 A. 30 November '92. Nine years,

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1 seven months, six days.

2 Q. Okay. Now, did you get any

3 sort of retirement from the military?

4 A. No, sir. I didn't -- I only

5 did -- I didn't do twenty years.

6 Q. Okay.

7 A. That's why I joined the

8 National Guard, finish it up and get my

9 retirement.

10 Q. Okay. When did you join the

11 National Guard?

12 A. I don't know. '93 or '94, I

13 don't know.

14 Q. When you -- When you left

15 Bitburg and got out of the Air Force, did

16 you come back to Alabama?

17 A. Yes, sir.

18 Q. And is that when you started

19 working with Miller Mechanical?

20 A. Yes, sir. After -- Well, I

21 signed up, took some welding classes first,

22 and then went to work for Miller Mechanical.

23 Q. Where did you take your

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1 welding classes?

2 A. Wallace.

3 Q. Wallace. And you say it was a

4 couple of months before you joined the

5 National Guard?

6 A. I don't know. May have been a

7 year. I don't know.

8 Q. Okay.

9 A. I don't know.

10 Q. And you joined the Alabama

11 Army National Guard?

12 A. Yes, sir. 2nd of the 117th

13 Field Artillery Battery.

14 Q. And are you in a different

15 unit now?

16 A. Yes, sir.

17 Q. Okay.

18 A. March 14th of '03 I was

19 involuntary transferred and extended to the

20 1165th MP Company. Deployed March 15th,

21 sent to Iraq for seems like forever; kept

22 getting extended, kept getting extended, I

23 had three extensions; then came back. I

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1 stayed with that company.

2 Q. Okay. How long were you in

3 Iraq during that time?

4 A. Seventeen, eighteen months. I

5 don't know.

6 Q. When did you return? I assume

7 it was in 2004?

8 A. Oh, it was in 2004. Late

9 2004. I think it was around August.

10 Q. Okay. And what did the -- You

11 said you were in the 117th Field Artillery

12 Battery, what was their -- what were they

13 there for? What did they do?

14 A. It was field artillery unit.

15 I was 13 Echo. It's called fire directional

16 specialist.

17 Q. Which means what?

18 A. Which means I -- The forward

19 observer sends me coordinates of where he

20 wants the rounds to go from the guns.

21 Q. Okay.

22 A. I take the wind velocity, the

23 -- The forward observer is looking at,

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<p style="text-align: right;">Page 57</p> <p>1 the view, from where the guns would be 2 looking at it; I plot everything on a map, 3 and I send the message to the guns, fire 4 mission, get ready to fire, I tell them what 5 to fire, how to fire it, when to fire it, at 6 what elevation, and what angle. 7 Q. What kind of guns are you 8 talking about? 9 A. 105 Howitzers. 10 Q. Okay. And was that -- Were 11 you pretty narrowly focused with the 117th? 12 A. Yes, sir. 13 Q. Okay. 14 A. What do you mean was I -- 15 Q. I mean, was that what you did? 16 Did you do anything else? 17 A. No, sir. Well, they changed 18 to a chemical company and I didn't -- I 19 don't like chemicals. 20 Q. When did they change to a 21 chemical company, after you had gone to 22 Iraq? 23 A. No, sir. A few months before</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. I'm assuming you did that. 2 A. We conducted patrols to our 3 assigned sector of town, Baghdad at first. 4 My responsibility was the southeast side of 5 Baghdad. Pretty good sector. I had a 6 police station called Billot Police Station. 7 We was training Iraqi police, and helped 8 them set up their force protection, teach 9 them how to patrol, teach them how to 10 policeman. At the same time we had to 11 conduct dismounted and mounted patrols of 12 the area, IED sweeps, raids, ambushes. 13 Basically you've got an MP on one side of 14 the fence, infantry on other side of the 15 fence, you combine them and you throw them 16 in. 17 We got in all-out ambushes so 18 bad that I had drivers thrown out of the 19 vehicles, men dying. Went from there to a 20 town we called Little Fallujah, the name of 21 it was Latifiyah, thirty-five miles south of 22 Baghdad; we took it over from the Marine 23 Corps. And it got its name Little Fallujah</p>
<p style="text-align: right;">Page 58</p> <p>1 I left. I don't remember. 2 Q. Okay. And when you say you 3 were involuntary transferred in March of 4 2003, how did that happen? 5 A. They called me up, told me to 6 pack my bags, I was leaving the next day and 7 go, and I did. 8 I'm a soldier, I go where I'm 9 told to go, and fight where I'm told to 10 fight. 11 DET 1, 1165th, Detachment 1. 12 Q. Okay. What is the 1165th? 13 A. Combat MP company. 14 Q. Now, was that more consistent 15 with what you had done over in Korea and 16 with your prior training? 17 A. Yes, sir. That's the reason I 18 got pulled. The state went through the 19 records, they didn't have enough people to 20 deploy, so I got pulled and sent with them. 21 Q. Okay. Tell me what you did 22 when you got to Iraq. 23 A. Besides trying to stay alive?</p>	<p style="text-align: right;">Page 60</p> <p>1 for a reason. If you was going down there, 2 you were going to make contact. 3 And we stayed down there every 4 day. We didn't have -- An army in a combat 5 zone, there is no such thing as a day off. 6 You work, you patrol. We patrolled every 7 day. Got -- Ran across I don't even know 8 how many IEDs, ambushes, going in kicking in 9 doors, taking the Iraqis out, taking them to 10 jail. 11 Train the Iraqi police so you 12 could fight them that night; train the Iraqi 13 army so you could fight them that night. 14 Left Latifiyah, went to First 15 Armored Division. I was on Colonel Baker's 16 personal security detail. 17 Q. Who is Colonel Baker? 18 A. Second Combat Brigade Team, 19 First Armored Division, commander. 20 Q. You were on his personal 21 security team? 22 A. Yes, sir. 23 Q. What did that involve?</p>

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1 A. Everywhere he wanted to go, I
2 had to make sure he made it there safely. I
3 mean every day he -- He was a jam-up
4 commander. He took care of his soldiers and
5 he knew his soldiers.
6 He traveled all over Iraq. He
7 had soldiers -- First Armored Division is a
8 big division, and he had a whole brigade
9 combat team, that's approximately
10 twenty-plus thousand soldiers. We'd go
11 anywhere up to a hundred miles from Baghdad.
12 Q. Okay.
13 A. His safety and welfare was my
14 responsibility. I'd make sure he stayed --
15 he was kept safe no matter where he went or
16 what he did.
17 Q. And was that the last thing
18 you did when you were in Iraq?
19 A. Yes, sir.
20 Q. Okay. Since you -- Well, when
21 did you get back home from Iraq that second
22 time?
23 A. Like I say, I think it was

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1 around August of '04. I'm not sure.
2 Q. Okay. And beginning in --
3 Well, after August of '05, were you still a
4 member of the National Guard?
5 A. Yes, sir. I still am.
6 Q. Same company and everything?
7 A. Yes, sir.
8 Q. Okay. What is your current
9 rank?
10 A. Staff sergeant, E-6. Until a
11 few months from now, and I'll be promoted to
12 an E-7.
13 Q. What's the difference between
14 E-6 and E-7?
15 A. Pay.
16 Q. Pay?
17 A. Title, job title. I'll be
18 taking over -- Right now I'm a fill-in
19 platoon sergeant. Any time we deploy, I'm
20 in charge of a platoon. But when I get that
21 promotion, it will be officially on paper,
22 I'll take official command of that platoon.
23 Q. Okay. Which platoon?

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1 A. Third platoon.
2 Q. What's the difference in pay
3 between E-6 and E-7?
4 A. I don't know yet.
5 Q. Okay. And when you -- When
6 you began back in 1983 at Lackland -- or at
7 Fort McClellan, what was your rank then?
8 A. E-1.
9 Q. E-1?
10 A. Bottom of the totem pole.
11 Q. And did you move from E-1 to
12 E-2?
13 A. Yeah.
14 Q. When was that?
15 A. I don't know.
16 Q. Do you remember when your
17 ranks changed, thinking back?
18 A. No. Back then it didn't
19 matter. Until you hit E-5 in the military,
20 it don't matter.
21 Q. All right. When did you hit
22 E-5?
23 A. Right before we went to Desert

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1 Shield.
2 Q. And to progress from E-5 to
3 E-6, does it take training, recommendations
4 from superiors?
5 A. Takes training, takes certain
6 schools you have to have, takes
7 recommendations. There's a lot of
8 requirements you have to have. Your packet
9 goes up before the State board. I picked my
10 E-6 up in Iraq.
11 Q. When was that, the second time
12 or first time?
13 A. Second time. In Air Force you
14 don't get E-6 prior to ten years. It just
15 don't happen. Like I say, you got all these
16 E-9s on the State board looking at your
17 packet, your records, your recommendations,
18 whether you have the requirements. They
19 pick your record apart with a fine-toothed
20 comb.
21 Q. What have you done to go from
22 E-6 to E-7?
23 A. Same thing. This last school,

16 (Pages 61 to 64)

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<p style="text-align: right;">Page 65</p> <p>1 month-long school I've been in, was the last 2 requirement I needed to make E-7. And 3 really it's up to the State and my unit. My 4 unit, if they don't think you're ready, 5 you're not going to get it. 6 Q. What was the last school you 7 attended? 8 A. That BNCOC, Basic 9 Noncommissioned Officers Course. 10 Q. Okay. Let's talk about that. 11 A. All right. 12 Q. Tell me more about that. What 13 is it? 14 A. Well, you've got to know the 15 military legal system, as far as Uniform 16 Code of Military Justice; you've got to have 17 managerial skills; you've got to have -- I 18 mean, you spend two weeks in the field, so 19 your combat skills is tested big time. 20 Q. During the school? 21 A. Yes, sir. 22 Q. And is it a month-long school? 23 A. Well, I did two phases.</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. Mr. Dees, going back on the 2 Record here. Just a couple other questions 3 about your military background. 4 You had mentioned that you 5 finished Phases II and III of BNCOC school. 6 How long did that take to finish II and III? 7 A. Four weeks. That's mostly 8 field training. 9 Q. Okay. 10 A. All my -- I spent -- Like I 11 said, when I was seventeen, I went through 12 basic training. I come from a military 13 family, I've been a -- military is all I've 14 ever known. I don't have one blemish. I've 15 got letters of certificates, letters of 16 appreciation from full bird colonels; I've 17 got achievement medals, accommodation 18 medals; put in for a bronze star in Iraq. 19 You can ask any of my soldiers, Sergeant 20 Barnes, my soldiers that work for me, my 21 seniors, any of them, they'll attest to my 22 military background and my career. 23 Q. Who -- And you mentioned</p>
<p style="text-align: right;">Page 66</p> <p>1 There's three phases for my MOS, and each 2 one is two weeks long. And I did the second 3 and third phrases back to back. 4 Q. All right. What was the first 5 phase? 6 A. First phase is all basic 7 military knowledge, as far as your admin 8 side. 9 Q. When did you do that? 10 A. Last year. Last September, I 11 believe. 12 Q. All right. When did you do 13 Phase II? 14 A. I don't know. A month ago. 15 Q. Okay. And you still have to 16 do Phase III? 17 A. No, sir. I did Phase II and 18 III back to back. 19 Q. Okay. 20 THE WITNESS: I need to take a 21 break if you don't mind. 22 MR. JOHNSON: That's fine. 23 (Recess taken.)</p>	<p style="text-align: right;">Page 68</p> <p>1 Sergeant Barnes, is he one of your soldiers? 2 A. He's my operation NCO, he 3 works for me. Sergeant Richberg, Sergeant 4 Martin. 5 Q. Give me those names. You had 6 Sergeant Barnes? 7 A. Sergeant Franklin D. Barnes. 8 Q. He's your NCO? 9 A. He's my operations NCO. He 10 works for me. He's the one that sent the 11 letter to Hyundai. 12 Q. Did you tell him to send it? 13 A. I went to the unit and 14 complained because I was being ordered to 15 give military orders for a drill weekend. 16 And Greg Prater knows -- He was in the 17 Guard, he knows you do not get military 18 orders for a drill weekend. I gave them a 19 schedule. Every time I hire on with an 20 employer, I tell them up front, I'm in the 21 National Guard, is this going to cause a 22 problem. 23 Q. Did you tell Hyundai that up</p>

17 (Pages 65 to 68)

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 69</p> <p>1 front?</p> <p>2 A. I told Hyundai that up front.</p> <p>3 I told International Paper, I told BE&K, I</p> <p>4 told IP at Thorsby. I've always been up</p> <p>5 front. You can ask my soldiers, you can ask</p> <p>6 the people I -- Well, y'all's lawyer</p> <p>7 interviewed my coworkers, they told him the</p> <p>8 same thing. Leon Dees is honest. If he</p> <p>9 screws up he will tell you. I may not be</p> <p>10 perfect. I make mistakes just like the next</p> <p>11 guy. But if I make one, I'll tell you. You</p> <p>12 can go back to my employer at Thorsby, my</p> <p>13 maintenance manager Danny Wyatt, I crashed</p> <p>14 an eighty-five thousand dollar chipper. I</p> <p>15 didn't know it. I went home that day, I</p> <p>16 come back in, it was strowed all over</p> <p>17 everywhere. They didn't have a clue what</p> <p>18 happened to it. I knew what had happened.</p> <p>19 I went up and I told them. I thought I was</p> <p>20 fixing to get fired. But I told them</p> <p>21 exactly what happened.</p> <p>22 If I mess up, you can ask my</p> <p>23 soldiers or anybody, if I mess up, I'm the</p>	<p style="text-align: right;">Page 71</p> <p>1 is at Hyundai?</p> <p>2 A. He's a maintenance assistant</p> <p>3 -- maintenance manager or assistant</p> <p>4 maintenance of the -- I'm not sure which</p> <p>5 department. He's on the electrical side.</p> <p>6 I'm not sure.</p> <p>7 Q. Do you know if he was in the</p> <p>8 military?</p> <p>9 A. Danny Blue?</p> <p>10 Q. Uh-huh.</p> <p>11 A. I don't think so. I'm not</p> <p>12 sure, but I don't think so.</p> <p>13 Q. That's fine. I don't know him</p> <p>14 at all.</p> <p>15 But you told him specifically</p> <p>16 you were in the Guard?</p> <p>17 A. Yes, sir, I did.</p> <p>18 Q. And did he indicate that would</p> <p>19 be a problem?</p> <p>20 A. No, sir.</p> <p>21 Q. Did he indicate that anybody</p> <p>22 at Hyundai would have a problem with that?</p> <p>23 A. No, sir.</p>
<p style="text-align: right;">Page 70</p> <p>1 first one to admit it.</p> <p>2 Q. You mentioned something that</p> <p>3 was interesting to me. You said when you</p> <p>4 got hired on by Hyundai, as with other</p> <p>5 employers, you told them you were a member</p> <p>6 of the National Guard.</p> <p>7 A. I gave Greg Prater my yearly</p> <p>8 schedule, year in advance we get our</p> <p>9 schedules, every October.</p> <p>10 Q. Let me make sure you</p> <p>11 understand my question. I assume what</p> <p>12 you're talking about with Greg Prater, he</p> <p>13 wasn't the one that hired you, was he?</p> <p>14 A. Danny Blue interviewed me.</p> <p>15 And I told Danny Blue I was in the Guard. I</p> <p>16 told him I was in the National Guard, was an</p> <p>17 active member in the Guard and have a</p> <p>18 commitment to the Guard.</p> <p>19 Q. And was Danny Blue -- Who was</p> <p>20 he? Was he somebody that interviewed you</p> <p>21 during the hiring process?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And do you know what his role</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Did he say anything about</p> <p>2 whether Hyundai has policies that support</p> <p>3 members of the Guard?</p> <p>4 A. Their handbook states that.</p> <p>5 You've got a copy of their handbook, and it</p> <p>6 states their military policy.</p> <p>7 Q. And you've got a copy of their</p> <p>8 handbook?</p> <p>9 A. Yes, sir.</p> <p>10 Q. When you got a copy of the</p> <p>11 handbook, did they get you to sign an</p> <p>12 acknowledgement saying you received it?</p> <p>13 A. I don't remember. I don't</p> <p>14 know. I may have, I may not. I don't know.</p> <p>15 (Whereupon, Defendant's</p> <p>16 Exhibit No. 2 was marked</p> <p>17 for identification.)</p> <p>18 Q. Mr. Dees, this is an exhibit</p> <p>19 we've marked as Exhibit Number 2. Do you</p> <p>20 recognize that document?</p> <p>21 A. Let me read it and make sure.</p> <p>22 This is it.</p> <p>23 Q. And I know that -- It appears</p>

18 (Pages 69 to 72)

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<p style="text-align: right;">Page 73</p> <p>1 the date on that is January 10th of '06; 2 correct? 3 A. Yes, sir. 10 January '06. 4 Q. And is that your signature 5 down there at the bottom? 6 A. Yes, sir. 7 Q. And my assumption is, since 8 it's from January 10th, of '06, this wasn't 9 signed at the time you initially hired on; 10 correct? You hired on before '06; right? 11 A. Yes, sir. 12 Q. Do you know -- Do you recall 13 if you received a handbook at the time you 14 were hired and then they issued another 15 handbook later? 16 A. No, sir. That was it. But 17 why was the '06 -- What was the original 18 number? Looks like 10 January '07 and then 19 the '06 is highlighted. 20 Q. Okay. Do you know if that's 21 your handwriting or do you remember doing 22 that? 23 A. I know -- I know they had a</p>	<p style="text-align: right;">Page 75</p> <p>1 Q. Your clock number? 2 A. Old clock number. 3 Q. Okay. And would it be fair to 4 state that possibly prior to that, you had 5 received a copy of the handbook? 6 A. I received a copy of the 7 handbook when I hired on. 8 Q. Okay. 9 A. But like I said, this here, if 10 you look in the back of that handbook, or 11 the front, one, it's got this -- a statement 12 similar to this, or something in it -- 13 Q. Okay. 14 A. -- and you're supposed to sign 15 it. And none of us signed it. 16 Q. Okay. 17 A. That's why they came out with 18 these. 19 Q. Do you remember reading the 20 handbook when you first got hired on? 21 A. All the way through? 22 Q. Sure. 23 A. No. Not all the way through.</p>
<p style="text-align: right;">Page 74</p> <p>1 big push for everybody to sign that there, 2 because nobody had actually signed the -- 3 They had a form in the handbook to sign, but 4 nobody had actually signed it. 5 Q. Do you remember when they sent 6 this -- sent the acknowledgement around to 7 get people to sign it? 8 A. To be honest, the exact date 9 or time, no. 10 Q. Okay. 11 A. But, mine says 10 January '07, 12 then the 7 is crossed out and the 6 is 13 highlighted. 14 Q. Okay. And you don't recall 15 whether you did that or not? 16 A. No, sir. Well, normally when 17 I do something like that, from my military 18 background, I initial it. 19 Q. Okay. But I assume that's 20 your signature? 21 A. That's my signature. 22 Q. Okay. 23 A. And that's my clock number.</p>	<p style="text-align: right;">Page 76</p> <p>1 I mean I read bits and pieces and parts here 2 and there, yes, sir. 3 Q. All right. Do you remember 4 reading the part about military leaves or 5 anything related to military training? 6 A. Yes, sir, it is. 7 Q. Do you remember what it says? 8 A. It says that -- that you don't 9 have to use your vacation time in lieu of 10 your military training. Because that was a 11 big issue. 12 Q. Okay. Was his name Danny 13 Blue? 14 A. Yes, sir. 15 Q. Okay. Did he say anything 16 else about Hyundai supporting members of the 17 military services or Guard with leaves? 18 A. He said my being in the Guard 19 wouldn't have anything to do with me getting 20 hired. 21 Q. Okay. And you did get hired? 22 A. Yes, sir. 23 Q. Okay.</p>

19 (Pages 73 to 76)

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<p style="text-align: right;">Page 77</p> <p>1 A. But like I said, my military 2 career, they can -- they can look at 3 anything that they want to or talk to 4 anybody in my unit if they want to, I'd be 5 glad to let them.</p> <p>6 Q. My assumption is, your 7 attorneys have given us a number of 8 commendations and awards and things that 9 relate to your military service.</p> <p>10 A. Yes, sir. I've got 11 achievement metals out the ying-yang, 12 accommodation metals.</p> <p>13 Q. I'm assuming that you've 14 provided to your attorneys all of those that 15 are in your possession?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. Based on what you've 18 said and based on my review of your 19 accommodations and awards, my assumption is 20 you were never disciplined for anything 21 while you were in the military?</p> <p>22 A. No, sir. I had an outstanding 23 military -- I even took honor grad from a</p>	<p style="text-align: right;">Page 79</p> <p>1 feel we have the need to know. There's 2 three companies from my battalion going, 3 217th, 214th, 1165th.</p> <p>4 Q. And in addition to not being 5 disciplined while you were in the military, 6 I assume you were never court martialed for 7 anything?</p> <p>8 A. No, sir. No Article 15, no 9 letters of counseling, no letters of 10 reprimand. I come -- I know what my duty 11 is, and, like I said, I fulfill that duty. 12 I take care of my soldiers and my soldiers 13 take care of me. That's all I've ever 14 known, that's what I like, and I'm good at 15 it.</p> <p>16 Q. Now, earlier you used a term I 17 want to clear up, you said MOS, that stands 18 for Military Occupational Skill; correct?</p> <p>19 A. Yes, sir. I don't remember 20 using it, but that's what it stands for.</p> <p>21 Q. I think you used it. 22 Your military occupational 23 skill, would that be military police?</p>
<p style="text-align: right;">Page 78</p> <p>1 Marine Corps school.</p> <p>2 Q. Were you ever disciplined for 3 anything while you were with the National 4 Guard?</p> <p>5 A. No, sir. I know my job and 6 I'm very, very proud of the job I do, and 7 proud of the uniform I wear.</p> <p>8 Q. Okay.</p> <p>9 A. I've served my country two 10 different tours, combat tours, and I'm going 11 back again next year, and I'm going back 12 willingly.</p> <p>13 Q. Going back where?</p> <p>14 A. Iraq.</p> <p>15 Q. Do you know what you're going 16 to do when you go?</p> <p>17 A. Yes, sir, I do.</p> <p>18 Q. What are you going to do?</p> <p>19 A. Convoy security. Most 20 dangerous job you can have over there right 21 now.</p> <p>22 Q. Okay. When are you leaving?</p> <p>23 A. We won't know that until they</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Yes, sir. That's one of them.</p> <p>2 Q. I don't know the answer to 3 this: Can people have more than one MOS?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And do you have more than one?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. Tell me what yours are?</p> <p>8 A. 13 Echo, field artillery, fire 9 direction control, FDC, fire direction 10 specialist. And 74 Delta. I ain't got a 11 clue what that is. It's in my records, it's 12 either chemical or signal one, I don't know.</p> <p>13 Q. 13 Echo is that military 14 police?</p> <p>15 A. No, sir. That's artillery.</p> <p>16 Q. Okay. And is that all the 17 MOS's that you're aware of?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. Have you ever been 20 arrested for anything?</p> <p>21 A. No, sir.</p> <p>22 Q. Have you ever filed a worker's 23 compensation claim?</p>

20 (Pages 77 to 80)

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<p>1 A. No, sir.</p> <p>2 Q. Have you ever filed a Social</p> <p>3 Security claim?</p> <p>4 A. No, sir.</p> <p>5 Q. Are you receiving any sort of</p> <p>6 payments now for any sort of disability,</p> <p>7 illness, short-term disability, long-term</p> <p>8 disability, anything like that?</p> <p>9 A. When I came back from Iraq, I</p> <p>10 had to have my shoulder operated where I</p> <p>11 messed it up in Iraq. I got, I think it</p> <p>12 was, short-term disability through the IP, I</p> <p>13 believe. I'm not sure how it worked. They</p> <p>14 took care of everything.</p> <p>15 Q. All right. What kind of</p> <p>16 shoulder surgery did you have? Did you have</p> <p>17 a rotator cuff injury?</p> <p>18 A. Rotator cuff, lost the lining</p> <p>19 in my shoulders, muscles. Something to do</p> <p>20 with the bone, I don't know.</p> <p>21 Q. What did you have done, do you</p> <p>22 know?</p> <p>23 A. The muscles was completely</p>	<p>1 Q. Okay. Is your shoulder back</p> <p>2 where you can work fully at this point?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Are you having any ongoing</p> <p>5 problems that prevent you from working in</p> <p>6 any way, shape, or form?</p> <p>7 A. No, sir.</p> <p>8 Q. Now, prior to today, to get</p> <p>9 ready for this deposition, did you review</p> <p>10 any documents?</p> <p>11 A. Just what Hyundai sent me, I</p> <p>12 went over my military records.</p> <p>13 Q. Okay. Anything -- When you</p> <p>14 say just what Hyundai sent you, what was</p> <p>15 that?</p> <p>16 A. I don't remember. Benefits</p> <p>17 packages, hire-on package, junk like that.</p> <p>18 Q. Okay. Are you talking about</p> <p>19 stuff we sent to your lawyer?</p> <p>20 A. Yeah. Some statements from</p> <p>21 Will Ware, I think.</p> <p>22 Q. Okay.</p> <p>23 A. Mostly it was all benefits,</p>
Page 82	Page 84
<p>1 torn off from the front or the back, one,</p> <p>2 half way on the other side. Like I say, I</p> <p>3 lost the lining in my shoulder. Something</p> <p>4 else, I don't remember what the doc said.</p> <p>5 He said it was screwed up.</p> <p>6 Q. Where did you have the surgery</p> <p>7 done?</p> <p>8 A. Birmingham.</p> <p>9 Q. Birmingham?</p> <p>10 A. Yes, sir. I ain't letting the</p> <p>11 Army cut on me no more. They've done it two</p> <p>12 or three times, and every time it ain't gone</p> <p>13 good.</p> <p>14 Q. Okay. What were the other two</p> <p>15 or three times for?</p> <p>16 A. When I was in Baghdad, they</p> <p>17 cut me open in a make-shift hospital in the</p> <p>18 middle of Baghdad to take my appendix out.</p> <p>19 And I woke up with industrial staples in my</p> <p>20 gut that I had to take out. They cut my</p> <p>21 wisdom teeth out up at Fort Lewis, and I</p> <p>22 still don't have the feeling in my jaw. So</p> <p>23 I wasn't going for a third.</p>	<p>1 and hire-on package, and stuff from my</p> <p>2 previous employers.</p> <p>3 Q. Okay. Have you reviewed</p> <p>4 anything else?</p> <p>5 A. No, sir.</p> <p>6 Q. Did you -- And, again, I'm not</p> <p>7 -- I'm not going to ask you anything that</p> <p>8 you talked to your lawyers about or asked</p> <p>9 your lawyers or anything like that.</p> <p>10 But other than your lawyers,</p> <p>11 did you speak to anybody getting ready for</p> <p>12 the depo?</p> <p>13 A. No, sir.</p> <p>14 Q. Did you review the complaint</p> <p>15 that was filed?</p> <p>16 A. That my -- What do you mean?</p> <p>17 Which -- That my lawyers filed?</p> <p>18 Q. Yes, sir. To start the</p> <p>19 lawsuit, your lawyers filed a summons and</p> <p>20 complaint at the courthouse.</p> <p>21 A. Yes, sir.</p> <p>22 Q. Did you look at it getting</p> <p>23 ready for today?</p>

21 (Pages 81 to 84)

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<p>1 A. I looked at it awhile back. I</p> <p>2 don't remember. I've looked at it, yes,</p> <p>3 sir.</p> <p>4 Q. But did you look at it to get</p> <p>5 ready for today?</p> <p>6 A. I don't remember, to be</p> <p>7 honest.</p> <p>8 Q. Okay.</p> <p>9 A. I talked to Bob yesterday</p> <p>10 about some stuff, but I don't remember. To</p> <p>11 be honest, I don't remember.</p> <p>12 Q. Okay. And when you say you</p> <p>13 talked to Bob, are you referring to</p> <p>14 Mr. Hall, who is here?</p> <p>15 A. Hall, yes, sir.</p> <p>16 Q. Okay. And what did y'all talk</p> <p>17 about?</p> <p>18 A. The paperwork that he had</p> <p>19 drawn up, gone over, my records.</p> <p>20 Q. Did you review his expert</p> <p>21 report with him?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. Was there anything in</p>	<p>1 Basically, I lived there more than I did at</p> <p>2 home.</p> <p>3 Q. Okay. Which -- I mean, when</p> <p>4 was the last time you spoke to one of your</p> <p>5 coworkers?</p> <p>6 A. Bornberg called me yesterday</p> <p>7 evening I believe. Yesterday sometime.</p> <p>8 Q. Who was that?</p> <p>9 A. Mark Bornberg.</p> <p>10 Q. What did he talk about?</p> <p>11 A. Just letting me know he was</p> <p>12 going to Maplesville to cut a tree down for</p> <p>13 one of my friends.</p> <p>14 Q. Did y'all talk about the</p> <p>15 deposition or the lawsuit at all?</p> <p>16 A. No, sir. He asked how it was</p> <p>17 going, I said I don't know yet.</p> <p>18 Q. Have you talked to any of your</p> <p>19 former coworkers about the lawsuit or this</p> <p>20 deposition?</p> <p>21 A. They -- Some lawyers from</p> <p>22 South Carolina interviewed -- had them all</p> <p>23 at work, was going to interview them all one</p>
Page 86	Page 88
<p>1 his expert report that you disagreed with?</p> <p>2 A. No, sir. I mean, I ain't no</p> <p>3 accountant or no lawyer.</p> <p>4 Q. Okay.</p> <p>5 A. So did I understand</p> <p>6 everything? No, sir.</p> <p>7 Q. All right. Was there anything</p> <p>8 in his expert report that you asked him to</p> <p>9 change in any way, shape, or form?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Okay. Other than reviewing</p> <p>12 the report that he drafted, what else did</p> <p>13 you do?</p> <p>14 A. That was about it.</p> <p>15 Q. When was that?</p> <p>16 A. I looked at Mr. Hall's report</p> <p>17 yesterday.</p> <p>18 Q. Okay. Did you speak with</p> <p>19 anybody else that worked for Hyundai getting</p> <p>20 ready -- prior to today getting ready?</p> <p>21 A. No, sir. I mean, my</p> <p>22 coworkers, they called me. I mean, we're</p> <p>23 friends. We was tight, we was real close.</p>	<p>1 night. And he interviewed three of them and</p> <p>2 said he didn't want to talk to none of the</p> <p>3 rest of them is the only thing they told me.</p> <p>4 Q. Who said that?</p> <p>5 A. Drake Barefoot.</p> <p>6 Q. And he said what now?</p> <p>7 A. Said that a lawyer told him</p> <p>8 that they didn't have to talk to him, but</p> <p>9 he'd like to ask them some questions. And</p> <p>10 he started interviewing them, and says he</p> <p>11 interviewed the third one and come out and</p> <p>12 told the rest of them to leave, that he</p> <p>13 wasn't getting what he wanted.</p> <p>14 Q. Okay. Who are the three that</p> <p>15 you think were interviewed?</p> <p>16 A. I don't remember. Drake told</p> <p>17 me the names, but I don't remember who it</p> <p>18 was.</p> <p>19 Q. Okay. And that's Drake</p> <p>20 Barefoot?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. Did Drake tell you</p> <p>23 anything else about the interview?</p>

22 (Pages 85 to 88)

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Page 89	Page 91
<p>1 A. No, sir. I didn't ask him 2 nothing else. 3 Q. Okay. 4 A. I didn't ask him that, but -- 5 Q. Did you talk to anybody else 6 about an interview? 7 A. No, sir. 8 Q. Other than Drake, do you know 9 anybody that gave an interview? 10 A. Like I said, Drake came and 11 told me who all he talked to, but I don't 12 remember who it was. That's been a while -- 13 few months ago, I guess. 14 Q. Okay. 15 A. Like I said, we was good 16 friends. Most of the time we just call each 17 other to pick on each other. 18 Q. Okay. And other than that 19 discussion, after those interviews, have you 20 had any other talks with Drake about the 21 lawsuit or this deposition or anything like 22 that? 23 A. No. Like I said, they'll call</p>	<p>1 this -- her Korean culture, she just -- she 2 was nervous. 3 Q. Okay. 4 A. That was it. 5 Q. Okay. 6 A. She's scared of the Koreans. 7 Q. Okay. Why is that? 8 A. I mean, in Korea you don't 9 buck the system at all. Korean civilian 10 life is like military life, you don't -- you 11 don't go up against the system at all. If 12 they tell you to jump off a bridge, you jump 13 off a bridge and thank them half way down. 14 Q. Okay. Other than your wife, 15 did you speak to any other family members 16 getting ready for the deposition? 17 A. No, sir. I ain't had time. 18 I've been up at Fort McClellan for a month, 19 I came home Saturday. And she's always got 20 something for me to do around the house, so, 21 no. 22 Q. I understand that. 23 Either in getting ready for</p>
Page 90	Page 92
<p>1 and ask, and I -- Like I said, I ain't no 2 lawyer and I don't know, so I just -- that's 3 the same thing I tell them, I don't know. 4 Q. Okay. Have you talked to 5 anybody else at Hyundai, other than your 6 coworkers about this lawsuit? 7 A. No, sir. 8 Q. Or about this deposition? 9 A. No, sir. 10 Q. I assume you talked to your 11 wife before coming here today? 12 A. I live with her, yes, sir. 13 Q. Well, did you talk to her -- 14 Again, remember I told you earlier some of 15 my questions don't make sense. 16 That made sense, but it wasn't 17 the right question. Did you talk to her 18 about this lawsuit or about your deposition 19 in preparation for today? 20 A. I reckon, yes, sir. 21 Q. Okay. Do you remember what 22 y'all talked about? 23 A. No. I mean, she just said</p>	<p>1 the deposition or at any time during the 2 lawsuit, have you kept a journal or put 3 anything down in writing that might have 4 information relevant to the lawsuit? 5 A. Have I kept a journal? No, 6 sir. I kept notes when I was at Hyundai, 7 and they were taken. 8 Q. When you say you kept notes, 9 what were your notes like? 10 A. I spent several years in the 11 military, I kept meticulous notes: dates, 12 times, places, specific comments. 13 Q. What did you keep them on? 14 A. Just blank copy paper. 15 Q. Blank copy paper? 16 A. Yes, sir. 17 Q. What color copy paper, plain 18 white? 19 A. Plain white paper. 20 Q. Where did the blank copy paper 21 come from? 22 A. Probably out of the copy 23 machine there.</p>

23 (Pages 89 to 92)

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<p style="text-align: right;">Page 93</p> <p>1 Q. At work?</p> <p>2 A. Yes, sir. I mean, I don't</p> <p>3 know. They gave us tablets to keep notes</p> <p>4 on, to write daily logs on. So I don't know</p> <p>5 where I got it from.</p> <p>6 Q. Did you ever keep anything on</p> <p>7 a journal or a daily log?</p> <p>8 A. We had to fill out daily</p> <p>9 reports there at the plant, yes.</p> <p>10 Q. Okay. And what did you do</p> <p>11 with those reports?</p> <p>12 A. I turned mine in every day,</p> <p>13 except for one day when I forgot to turn one</p> <p>14 in and got in trouble for it.</p> <p>15 Q. Who did you turn it in to?</p> <p>16 A. We'd turn them in. There was</p> <p>17 a box in the office we had to turn them in</p> <p>18 to.</p> <p>19 Q. When you say the office, is</p> <p>20 that like a maintenance office?</p> <p>21 A. Yes, sir. Every section has</p> <p>22 their own maintenance office.</p> <p>23 Q. Okay. Did any of your</p>	<p style="text-align: right;">Page 95</p> <p>1 Q. But other than you telling</p> <p>2 them that you had notes, did they ever --</p> <p>3 A. Yeah. I'd pull them out of my</p> <p>4 pocket, and they asked me, you got your</p> <p>5 notes? Yeah.</p> <p>6 Q. And were these notes related</p> <p>7 to issues you were having with Greg Prater</p> <p>8 or somebody else at the plant?</p> <p>9 A. Issues I was having period</p> <p>10 regarding my military service.</p> <p>11 Q. Okay. Did you ever take your</p> <p>12 notes home?</p> <p>13 A. Yes, sir. I'd take them home</p> <p>14 and bring them back -- they'd stay with me</p> <p>15 or either I'd lock them up in my locker.</p> <p>16 Q. And you kept them in your</p> <p>17 pocket?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Did you take any notes home</p> <p>20 that are still at your home?</p> <p>21 A. No, sir. When I left, my</p> <p>22 jacket was locked up in my locker, and I</p> <p>23 wasn't allowed to even go to my locker. I</p>
<p style="text-align: right;">Page 94</p> <p>1 coworkers ever see you writing on copy paper</p> <p>2 or writing in a journal about what was going</p> <p>3 on at work?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay.</p> <p>6 A. I mean, they knew I had notes.</p> <p>7 Q. Who were they? Which ones?</p> <p>8 A. All of them. Everybody on my</p> <p>9 shift and the other shift.</p> <p>10 Q. All right. Did they ever look</p> <p>11 at them?</p> <p>12 A. No, I don't reckon so.</p> <p>13 Q. You don't remember ever</p> <p>14 showing your notes to anybody?</p> <p>15 A. I don't reckon. No. No.</p> <p>16 Q. When you say they all knew</p> <p>17 that you had them, what makes you say that?</p> <p>18 A. I mean, I told them.</p> <p>19 Q. Okay. Other than you telling</p> <p>20 them --</p> <p>21 A. They seen that -- I kept them</p> <p>22 in my jacket pocket. Wherever I went, they</p> <p>23 went.</p>	<p style="text-align: right;">Page 96</p> <p>1 was took out of there like a prisoner, like</p> <p>2 a criminal. Prater went and got my jacket</p> <p>3 and brought it back to me, and there was no</p> <p>4 notes in the pocket.</p> <p>5 MR. SPORT: For the Record,</p> <p>6 Matt, we've asked y'all for those notes and</p> <p>7 haven't gotten them.</p> <p>8 A. That's like this box here, I</p> <p>9 don't know -- My locker stayed open,</p> <p>10 unlocked, for two months after I was fired.</p> <p>11 Then all of a sudden two months later they</p> <p>12 come in and throw a lock on it for another</p> <p>13 couple of months. Then they -- all of a</p> <p>14 sudden they take the lock off again.</p> <p>15 Q. You say that it was unlocked</p> <p>16 for two months?</p> <p>17 A. Yeah.</p> <p>18 Q. I assume you didn't go back</p> <p>19 there to see it personally?</p> <p>20 A. No.</p> <p>21 Q. What makes you think it was</p> <p>22 unlocked for two months?</p> <p>23 A. Bornberg told me. I asked him</p>

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<p style="text-align: right;">Page 97</p> <p>1 to look for my notes, and he said there's 2 nothing -- he said Kevin Hughes and Prater 3 had gone all through my locker. 4 Q. Do you know -- Did Bornberg go 5 there the day you were terminated or the day 6 after? 7 A. It was the day after. That 8 night I got terminated, I'd been at work an 9 hour -- I drove fifty-something miles to 10 work -- to work for an hour, didn't have a 11 clue I was being fired; got security guards 12 coming in with me, around my friends, 13 telling you, let's go. Like I said, I was 14 drug out like a criminal, and then that 15 lady, Wendy Warner, she was cold, short, 16 treated me like a piece of trash. 17 Q. Okay. 18 A. I've never been fired from a 19 job in my life. 20 Q. And we're going to talk more 21 about Wendy Warner before the day is out. 22 The notes that you're talking about, how 23 much information was it? How many pages?</p>	<p style="text-align: right;">Page 99</p> <p>1 up there in his office. He said however 2 Prater wants to run his shop, that's what 3 he's going to do and I'm going to back him 4 up. 5 Q. Is that all that Applegate had 6 to say? 7 A. Basically, yeah. Chewed me 8 out. 9 Q. Chewed you out how? 10 A. Told me that I needed to get 11 my act together. I mean, I got Guard duty, 12 I have a military obligation. I have to go 13 to that obligation. I'm going to go to that 14 obligation. Federal law protects me under 15 that obligation, but yet I'm still being 16 told that if I don't go to Guard duty and 17 don't show up to work, I'm going to be wrote 18 up for missing work. 19 Q. When Applegate said "get your 20 act together," what was he referring to? 21 A. I have no idea. I didn't ask 22 him. 23 Q. Did John Applegate ever ask to</p>
<p style="text-align: right;">Page 98</p> <p>1 One page, more pages? 2 A. No. No. There was several 3 pages. 4 Q. Several being what, two, 5 three? 6 A. Probably three or four. 7 Q. So. 8 A. My military career, when it 9 started, I figured it would drop after my 10 unit sent the letter, but, no. 11 Q. Okay. 12 A. But it wasn't just Prater, it 13 was Applegate, it was HR. It wasn't one 14 individual, it was company. 15 Q. What was Applegate doing? 16 A. He basically told me -- I 17 asked him one time, I said: What about the 18 letter my unit sent? He said: Well, I 19 ain't worried about that letter; He said, 20 whatever Prater says, I'm going to back him 21 up. I've never heard Prater say anything 22 out of the way, which he was never around 23 Prater when Prater was in our shop; he sat</p>	<p style="text-align: right;">Page 100</p> <p>1 see any military orders of yours? 2 A. No. He just told me that he 3 backed Prater up on whatever he said. 4 Q. Okay. 5 A. HR did, yeah. 6 Well, I take that back. There 7 was a little girl from HR, her name was 8 Keisha, I don't know what her last name is. 9 This was after my unit had sent the letter. 10 Said that -- She come out quoting something 11 from the ESGR regulation and then saying 12 that I had to provide orders so many days 13 prior to, or something, I don't remember. 14 And I said no, the regulation states that I 15 can be deployed up to three months on a 16 verbal order. 17 And I said: Y'all have my 18 schedule a year advance. You've had it. 19 They got my updated version, which he turned 20 in. It got so bad that when I -- like, the 21 -- I went to BNCOC Phase I, I believe in 22 September, and I was deployed in support of 23 Katrina, I had to carry my orders to human</p>

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<p style="text-align: right;">Page 101</p> <p>1 resources section myself, which y'all got 2 the papers somewhere in there where the HR 3 person had to sign off on me bringing my 4 orders up there, said manager not available, 5 because Prater wouldn't turn my orders in. 6 And you got Applegate and HR backing him up 7 on it, I'm against the wall. That's why I 8 kept notes. 9 Q. I want to carve out Greg 10 Prater for just a moment. 11 In terms of Mr. Applegate, how 12 many discussions did you have with him that 13 had anything to do with your military 14 service? 15 A. Two or three. 16 Q. Two or three? 17 A. I mean, every time I -- It was 18 several times, even after my unit sent the 19 letter. And he admitted to the letter being 20 there. 21 Q. All right. Do you think it 22 was more than two or three or just two or 23 three?</p>	<p style="text-align: right;">Page 103</p> <p>1 it? 2 A. No. 3 Q. How long before you were 4 actually terminated did your discussions 5 with Applegate take place? Was it back in 6 the fall? 7 A. It started around the fall. 8 And it went on up through December and 9 January. 10 Q. December and January? 11 A. Uh-huh. 12 Q. Did you have any problems 13 after January? 14 A. With -- Yeah, I mean -- 15 Q. With Applegate, I'm sorry. 16 A. With Applegate, yeah. 17 Q. Okay. So it went past 18 December and January, is what you're telling 19 me? 20 A. I believe it was in January, I 21 don't know. I don't remember the dates to 22 be exact. Like I say, they've got my notes, 23 that's got everything on it. They've got</p>
<p style="text-align: right;">Page 102</p> <p>1 A. I don't know. Like I said, it 2 was ongoing several, several months. 3 Q. All right. So over a period 4 of several months, you had several 5 discussions with him? 6 A. Uh-huh. And HR. 7 Q. But I'm asking about Applegate 8 for now. 9 A. Okay. 10 Q. During the discussions that 11 you had with Applegate, did he ever demand 12 to see any orders of yours? 13 A. I don't -- I don't think so. 14 I don't know. I don't remember. 15 Q. Okay. You -- 16 A. He said I needed to get my 17 mind together and focus on the plant, 18 instead of -- How did he phrase it? 19 He came up with some elaborate 20 word and said I needed to basically just 21 don't worry about my Guard duty and stay at 22 work. I don't remember how he phrased it. 23 Q. Do you remember when he said</p>	<p style="text-align: right;">Page 104</p> <p>1 them somewhere. I didn't bring them out of 2 the plant. 3 Prater is the one that brought 4 my jacket to me, they was in the pocket. He 5 had keys to my locker. I had security 6 guards on me, I couldn't go back and get my 7 personal stuff. I had to give Prater my 8 keys to my locker and it stayed unlocked. 9 He unlocked it and it stayed unlocked. And 10 I was pushed out with security guards in 11 front of everybody, like I said, like a 12 common criminal. 13 Q. During the time that you were 14 there, what kind of lock was on your locker? 15 A. I don't remember. I think it 16 was just a little red Master lock. 17 Q. Was it a keyed lock or 18 combination? 19 A. It was a keyed lock. I had to 20 give Prater my keys to get in it. 21 Q. Okay. 22 A. He's the one who brought my 23 stuff to me. And all he brought was my</p>

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<p style="text-align: right;">Page 105</p> <p>1 jacket and a little MP3 player that they had 2 given us for Christmas. 3 Q. Was he with anybody else? 4 A. No. I mean, I had to -- Like 5 I said, I had to stay there with the 6 security guards. 7 Q. Okay. 8 A. And Applegate may have walked 9 around with him. I don't know, I was so 10 upset. I didn't -- 11 Q. When you came to work that 12 morning -- 13 A. That night. 14 Q. I mean that night. -- had you 15 gone to your locker? 16 A. Yes, sir. I mean that's where 17 my tools was at. I had to go to my locker, 18 get my tools out. And that's the first 19 thing we did was go get our tools, go out on 20 the floor and get back briefed and all for 21 the shift, any problems we had. And I 22 went -- I'd go to my area of responsibility, 23 which was SOPS.</p>	<p style="text-align: right;">Page 107</p> <p>1 here. I walk around there, and there's the 2 security guards and John Applegate. I knew 3 what was going on, because I heard the 4 rumors, the war stories when they fire 5 someone. They bring security guards in and 6 try to bag and tag you and take you out. I 7 said, I can't believe this is happening. He 8 said no, no, we're just going to talk, you 9 ain't fired. I said, what's the security 10 guards doing here? No. No. We need to 11 talk. I said no, I know what's going on. 12 So I grabbed my radio, took it off, gave it 13 to Applegate, I think. I said, I'm going 14 back to go get my junk; I said I know y'all 15 are taking me to the gates, I'm going to get 16 my junk. No, you can't go back in there. 17 And the security guards come up. I said, 18 I've got personal stuff in there, I'm going 19 to get. No, you can't go get it. I said, 20 well, I'm not leaving without my gear. 21 Prater said, well, I'll go get it, he said 22 give me your keys. So I handed him my keys. 23 Like I said, I was so upset, I don't</p>
<p style="text-align: right;">Page 106</p> <p>1 Q. So at what point during that 2 evening were you pulled off the job? 3 A. I'd been there probably thirty 4 minutes or an hour. 5 Q. Tell me what you had done that 6 day so far. 7 A. Nothing. Like I said, I come 8 in, went to my locker, got my tools. 9 Q. Did you put your coat in your 10 locker? 11 A. Yes, sir. Because it was warm 12 that night. And I went out on the floor. 13 Might have been Paul Powell and then I was 14 talking to, I don't know, somebody on the 15 other shift, to see if we had problems that 16 day. And then I went back up to my area. 17 And about -- They was having a problem or 18 something on the press, and I seen Mr. Moon 19 down there, and I come down and was talking 20 to him, and my fellow coworkers. Prater 21 come up and said we need to talk. I turn 22 around and walk off to the office and -- 23 Applegate's office; he said no, no, around</p>	<p style="text-align: right;">Page 108</p> <p>1 remember if Applegate went with him or not. 2 Q. Okay. 3 A. Then they whisked me out with 4 security guards, took me around to the gate, 5 five miles from the parking lot I had parked 6 in, took me in the office, I walked in and 7 all the security guards are sitting there 8 bowed up, staring at me, walked me in a 9 little room. That lady sits me down, 10 introduces everybody, says her name, the 11 next fellow's name, Applegate's, and 12 somebody was sitting on my side of the 13 table, I don't remember. Held a letter up 14 like this (indicating), read it, slammed it 15 down on the table. I said, you're firing 16 me; I said, you've got a team leader in 17 there who's threatening several people 18 jumped up in their faces and you're firing 19 me and letting him stay. She said yes. 20 Q. Who are you referring to? 21 A. Wendy Warner, I guess. I 22 didn't know the lady. 23 Q. No. Who is the team leader</p>

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<p style="text-align: right;">Page 109</p> <p>1 you're referring to?</p> <p>2 A. Kevin Hughes. I mean he had</p> <p>3 had several altercations.</p> <p>4 Anyhow, she slammed the paper</p> <p>5 face down on the table, got up and walked</p> <p>6 out. She was just cold. The little short</p> <p>7 fellow, I don't remember his name, she told</p> <p>8 me his name. I mean, he was cordial, but --</p> <p>9 Q. What did he look like?</p> <p>10 A. I don't know. Just a little</p> <p>11 short fellow, a little overweight. He</p> <p>12 wasn't fat. I don't know.</p> <p>13 Q. Okay. You don't remember his</p> <p>14 name?</p> <p>15 A. Huh-uh.</p> <p>16 Q. Did he wear glasses?</p> <p>17 A. I don't remember. I was --</p> <p>18 like I said, I was upset. I've never been</p> <p>19 fired, never had a blemish in my civilian or</p> <p>20 military record. And here all of a sudden</p> <p>21 I'm getting fired for something I didn't do.</p> <p>22 Q. Had Greg Prater brought you</p> <p>23 your jacket yet?</p>	<p style="text-align: right;">Page 111</p> <p>1 and he said here, here's your jacket.</p> <p>2 Q. Did you look in your jacket at</p> <p>3 that point?</p> <p>4 A. I looked in my jacket when</p> <p>5 Prater brought it to me.</p> <p>6 Q. Did you know that there were</p> <p>7 notes missing?</p> <p>8 A. Yes, I did.</p> <p>9 Q. Did you say anything to</p> <p>10 Applegate?</p> <p>11 A. That's when I said, can I go</p> <p>12 back and get my stuff. No. Security guard,</p> <p>13 they put me in the vehicle, we left. I</p> <p>14 mean . . .</p> <p>15 Q. When you were in the room with</p> <p>16 Wendy Warner and the other gentlemen,</p> <p>17 including Mr. Applegate, did you tell them</p> <p>18 that I have some notes that are missing?</p> <p>19 A. I asked them could I go back</p> <p>20 and get my personal stuff, that's what I</p> <p>21 asked Applegate, said my tool bag and my</p> <p>22 personal stuff, like I said before.</p> <p>23 Q. But you never told them</p>
<p style="text-align: right;">Page 110</p> <p>1 A. Yeah. He brought it to me</p> <p>2 before the security guards took me out.</p> <p>3 Like I said -- and I asked them then, I said</p> <p>4 all that's in here is the MP3 player. I</p> <p>5 said, when am I going to get the rest of my</p> <p>6 junk, in the vehicle on the way around</p> <p>7 there. We'll mail it to you.</p> <p>8 Q. Did you -- When you were in</p> <p>9 the room with Wendy Warner and the other</p> <p>10 fellow that you were talking, and anybody</p> <p>11 else that was in the room, did you tell</p> <p>12 them, I've got more personal stuff in my</p> <p>13 locker and I'd like to go get it?</p> <p>14 A. She -- Yes, sir.</p> <p>15 Q. You said that to Wendy Warner</p> <p>16 and the other people?</p> <p>17 A. I asked was I going to be able</p> <p>18 to get my tool bag and my other stuff. And</p> <p>19 Applegate is the one that told me no, said,</p> <p>20 you're not going back in the plant.</p> <p>21 She slammed the paper down and</p> <p>22 got up and left. And Applegate, he took my</p> <p>23 keys to my personal safety lock, my lock,</p>	<p style="text-align: right;">Page 112</p> <p>1 anything specific that you were missing</p> <p>2 other than your tool bag?</p> <p>3 A. I said my personal stuff.</p> <p>4 Q. And you never mentioned any</p> <p>5 notes?</p> <p>6 A. No. I didn't mention</p> <p>7 specifically. I said my personal stuff,</p> <p>8 like I said.</p> <p>9 Q. Is it your testimony that you</p> <p>10 were aware at that point in time that your</p> <p>11 notes were not in your jacket?</p> <p>12 A. Yes, sir. Like I said, Prater</p> <p>13 went and got my jacket, so . . .</p> <p>14 Q. Did you ask Prater where your</p> <p>15 notes were?</p> <p>16 A. I don't remember. Like I say,</p> <p>17 I was mad. I was upset. I never had -- I</p> <p>18 never had anything -- Like I say, I've</p> <p>19 served my country and I've served it</p> <p>20 proudly, and I've served it for a long time.</p> <p>21 Q. Okay.</p> <p>22 A. And I'll do it again, gladly.</p> <p>23 And I've never, never been treated like I</p>

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<p style="text-align: right;">Page 113</p> <p>1 was a piece of trash like I was that night. 2 It was embarrassing. Then I have to go to 3 church on Sunday and look at my friends and 4 everybody knows, he got fired because he's 5 supposedly sleeping on the job. Everybody 6 is looking at you. No, that ain't right. 7 Q. Where were you when you 8 realized that the notes weren't in your 9 jacket? 10 A. There at the shop when they 11 brought me my jacket, like I said before. 12 Q. How far is the shop from your 13 locker? 14 A. My locker was in the shop. We 15 was on the outside of the shop. I wasn't in 16 the shop. He walked me from my area, around 17 the office, said go on around here. And we 18 went around the side of the shop. 19 Q. Could you see your locker from 20 where you were outside the shop? 21 A. No, sir. Block wall. And I 22 had the security guards there telling me I 23 couldn't go nowhere.</p>	<p style="text-align: right;">Page 115</p> <p>1 taken care of. The first two years kicked 2 my butt. After that, I haven't had a 3 problem since. 4 Q. Okay. When was this you filed 5 bankruptcy? 6 A. I don't know. You'll have to 7 -- I don't know. I'll have to get back with 8 you on that. 9 Q. Right when you got back from 10 Germany, though? 11 A. No, sir. It wasn't right -- 12 It was like a year or two later. I don't 13 remember. 14 Q. Where were you working then? 15 A. I don't remember. 16 Q. During the time that you were 17 with Hyundai, did you file any sort of 18 complaints with the HR department? 19 A. Yes, sir. That's where I 20 started out. It, apparently, didn't do no 21 good. 22 Q. All right. Let's talk about 23 the complaints. Did you file any written</p>
<p style="text-align: right;">Page 114</p> <p>1 Q. Okay. And we're going to get 2 back to some of these issues, but I want to 3 cover some more basic stuff before we get 4 into it more deeply. 5 Have you ever filed any other 6 lawsuits? 7 A. No, sir. 8 Q. Have you ever filed any 9 administrative complaints like with the EEOC 10 or some sort of governmental entity? 11 A. No, sir. 12 Q. Have you ever been sued? 13 A. No, sir. 14 Q. And you may have shaken your 15 head, but I don't know if I heard you say 16 no -- 17 A. No. 18 Q. You've not filed any EEOC -- 19 A. I filed -- When me and my wife 20 first came home from Germany, probably two 21 years after being home, I filed bankruptcy 22 because I didn't manage my finances right, I 23 was used to being in the Army and everything</p>	<p style="text-align: right;">Page 116</p> <p>1 complaints? 2 A. No, sir. There wasn't no form 3 -- a format for filing written complaints. 4 And when we tried, they didn't want to hear 5 it. 6 Q. Okay. Did you ever talk to a 7 team relations representative about problems 8 you were having? 9 A. Several times. Lucas Cooner 10 and Will Ware. 11 Q. Will Ware? 12 A. Yes, sir. And Lucas Cooner. 13 Q. Anybody else with Hyundai? 14 A. Greg Kimball. 15 Q. Greg Kimball? 16 A. And Keisha. I don't know what 17 -- I don't remember what her last name is. 18 She is no longer there. She went to Kia. 19 They moved her to Kia, in the HR department. 20 Q. Can you think of anybody else 21 that you complained to? 22 A. Other than the managers and 23 assistant managers, the production manager</p>

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<p style="text-align: right;">Page 117</p> <p>1 who said he was over Prater, Craig Stapley 2 and Jim Brookshire both. 3 Q. And the production manager was 4 who? 5 A. Craig Stapley -- 6 Q. Stapler? 7 A. Stapley, S-T-A-P-L-E-Y. 8 Q. All right. And what other 9 members of management did you complain to? 10 A. That was about it, I reckon. 11 Q. Just to make sure I'm clear, 12 you never submitted anything in writing to 13 human resources? 14 A. There was no way to submit 15 anything in writing. When I complained they 16 didn't want to hear anything about it. I 17 submitted an e-mail to Greg Kimball about 18 Prater harassing me about my Guard duty, and 19 I never received a reply to the e-mail in 20 person or anything. 21 Q. When you say the last time 22 Greg Prater harassed you about your Guard 23 duty --</p>	<p style="text-align: right;">Page 119</p> <p>1 Q. What was your log-in? 2 A. I don't know. That was a year 3 ago, almost. I don't know. 4 Q. Okay. 5 A. I have no idea. I think it 6 was my clock number, I think. I'm not sure. 7 Q. Okay. Do you know when you 8 were assigned the log-in ID? 9 A. It wasn't long after I was 10 hired. I'm not sure. 11 Q. Was it after you were hired? 12 A. Yeah. 13 Q. Okay. So when you say you 14 sent an e-mail to Greg Kimball, would that 15 have been on an internal Hyundai system, 16 e-mail system? 17 A. Yes, sir. 18 Q. You didn't send it from 19 Yahoo -- 20 A. No, sir. 21 Q. -- or Google e-mail or 22 anything like that? 23 A. No, sir. It was on the</p>
<p style="text-align: right;">Page 118</p> <p>1 A. Before I got fired. 2 Q. Where did you send the e-mail 3 from? 4 A. The maintenance shop. 5 Q. All right. Was Greg Kimball 6 working at that time? 7 A. I don't remember. I think it 8 was on -- I don't remember if it was on day 9 shift or night shift. I think it was on 10 night shift. But the e-mail, I mean, that 11 was probably a month before I'd gotten 12 fired, and he had plenty of time to respond. 13 MR. SPORT: Matt, we'd like to 14 request that e-mail, because I don't think 15 we have that. 16 (Recess taken.) 17 Q. Mr. Dees, we're back on the 18 Record. 19 You had talked a minute ago 20 about an e-mail you sent to Greg Kimball. 21 Did you have a log-in ID and a password at 22 Hyundai? 23 A. Yes, sir.</p>	<p style="text-align: right;">Page 120</p> <p>1 Hyundai system. 2 Q. And it was while you were at 3 work? 4 A. Yes, sir. 5 Q. And do you remember where you 6 sent it from? 7 A. The maintenance shop. Stamp 8 and maintenance shop. 9 Q. Anybody else see you send it? 10 A. Drake Barefoot and someone 11 else was there. I don't remember who the 12 other one was. 13 Q. Do you remember what was in 14 it? 15 A. It was a -- I don't remember 16 the exact wording, no. I was complaining to 17 Mr. Kimball that Prater was still giving me 18 a hard time about my Guard duty, and I felt 19 that my job was in jeopardy for that reason. 20 Because even -- Like I said, even after my 21 unit sent the letter, I complained to HR at 22 least two more times and both times met with 23 negative results, and I was still getting</p>

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<p style="text-align: right;">Page 121</p> <p>1 harassed about getting orders for my weekend 2 duty, when I wasn't showing up to work to go 3 to drill. 4 Q. Was the e-mail after you went 5 to HR? 6 A. Yes, sir. 7 Q. And the e-mail was after 8 somebody apparently sent a letter to 9 Hyundai? 10 A. Yes, sir. After my unit sent 11 the letter. 12 Q. Okay. Did you talk to anybody 13 else in management or in HR after you sent 14 that e-mail? 15 A. No, sir. I don't believe so. 16 Q. Okay. 17 A. I mean, I don't know. Like I 18 said, that was almost a year ago. 19 Q. Okay. But you don't recall 20 it? 21 A. No, sir. 22 Q. Do you recall having any more 23 discussions with Greg Prater about your</p>	<p style="text-align: right;">Page 123</p> <p>1 A. Prater. And supposedly 2 Applegate was backing him up, because 3 Applegate backed him on everything else, and 4 HR backed him too. And he told me I had to 5 use my vacation time -- He was thinking 6 about making me use my vacation time in lieu 7 of my military leave. And I said, well, 8 you're just going to go against the HMMA 9 handbook and throw it out the window. Rob 10 Clevenger told me I can do whatever I want 11 to, run my shop however I need to for the 12 benefit of the company. 13 Q. And this is Greg Prater said 14 that? 15 A. Yes, sir. Then he said that 16 Rob Clevenger had told him that. 17 Q. Did John Applegate ever tell 18 him he could do that, to your knowledge? 19 A. John Applegate told me to my 20 face that whatever decision Greg Prater 21 makes, he would back him on it. 22 Q. Did anybody else from human 23 resources ever say anything like that, to</p>
<p style="text-align: right;">Page 122</p> <p>1 service or weekend duty or anything after 2 that e-mail got sent? 3 A. He was always -- If he wasn't 4 telling me to bring in orders about my Guard 5 duty, he was making fun of what we did. Oh, 6 y'all just go down there and drink. Like I 7 said, it didn't matter who I complained to, 8 I complained to Greg Kimball, or Keisha, 9 John Applegate, they all: Well, I've never 10 heard Greg say anything like, I've never 11 heard Greg talk in a derogatory manner. 12 Q. That's what they said? 13 A. Yeah. And we back Greg up in 14 any decision he makes. 15 Q. When you talked to William 16 Ware, who's with team relations, what did he 17 say about it? 18 A. Prater would always use the 19 excuse that Rob Clevenger just said I can 20 do -- just like in the instance he was 21 trying to make me use my vacation for my 22 military service when I went to school. 23 Q. Who was?</p>	<p style="text-align: right;">Page 124</p> <p>1 your knowledge? 2 A. Keisha -- Greg Kimball -- The 3 only reason HR got on to Prater the first 4 time was because he told us we couldn't talk 5 to HR. As far as my military obligation, 6 anything else, nothing ever came out of 7 that. It was just like I hadn't said 8 anything to them at all. 9 (Off-the-Record discussion 10 was held.) 11 Q. The notes that you said you 12 kept? 13 A. Yes, sir. 14 Q. When did you start keeping 15 them? 16 A. The first time I went to HR. 17 I mean, when Prater -- he was -- He said he 18 was a tank commander in the National Guard 19 as an E-4, that's not allowed. It goes 20 against Army regulation. 21 Q. Say that again. I'm sorry. 22 A. He said that he was a tank 23 commander in the National Guard as an E-4.</p>

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<p style="text-align: right;">Page 125</p> <p>1 He showed me his ID card one time, he was a 2 corporal, and his ID card was expired. And 3 you're not allowed to be a tank commander in 4 the National Guard or the Army, period, as 5 an E-4. You have to be an E-7 or higher. 6 But anyhow -- What did you ask me? What did 7 I start out on? 8 Q. No. Let's -- I mean -- 9 A. Like I said, Clevenger and all 10 of them -- His excuse on everything was Rob 11 Clevenger told me I can run my shop how I 12 want to for the benefit of the company. 13 Q. Okay. Now, to your knowledge, 14 did Rob Clevenger ever say anything to you 15 about your military service? 16 A. I never met the man. 17 Q. So you don't have any 18 firsthand information -- 19 A. But Will Ware sat there and 20 told Prater, well, he can do whatever he 21 wants to, in front of me and everybody. 22 Q. Said who can do whatever he 23 wants to?</p>	<p style="text-align: right;">Page 127</p> <p>1 Everything was Rob Clevenger and human 2 resources and Applegate said I can do this. 3 And every time we talked to human relations 4 or human resources or Applegate, they backed 5 him up on every conversation. 6 Q. Okay. Tell me when did -- You 7 first started taking notes when? 8 A. Like I said, the very first 9 time he got on to me about my Guard duty. I 10 don't remember the exact date. I have no 11 idea. 12 Q. Do you remember the 13 approximate date? 14 A. No. I mean, August, 15 September, I don't know. July, August, 16 September, I don't know. 17 Q. At that point in time, did he 18 have your calendar for that year? 19 A. He had my calendar when I 20 hired on. 21 Q. Okay. 22 A. We get our yearly training 23 calendar every October.</p>
<p style="text-align: right;">Page 126</p> <p>1 A. That Prater could. And that 2 Applegate and HR could. He said we can run 3 the company however we want to. 4 Q. William Ware said that? 5 A. Yes, sir. Because Prater put 6 him on the spot, and he had to come up with 7 an answer. 8 Q. How did Prater put him on the 9 spot? 10 A. Prater -- Because I was told 11 to stay over that morning. Their handbook, 12 once again, states that you don't have to 13 stay over -- you can't be forced over ten 14 hours. I'd worked ten hours, Prater come up 15 and asked questions. I said as long as it 16 don't take over fifteen minutes, I'm tired. 17 He said, I can force you to stay here 18 twenty-four hours a day if I want to. I 19 said, no, once again, that goes against your 20 own handbook. 21 Q. What -- Is this a different 22 conversation here? 23 A. Yeah. Like I said he just --</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Uh-huh. 2 A. And he had it in his office on 3 his desk. 4 Q. Greg Prater did? 5 A. Yes, sir. 6 Q. Okay. So there would be no 7 question that if you were scheduled for 8 duty, he had it in advance? 9 A. Yes, sir. 10 Q. Okay. 11 A. But yet he still wanted 12 military orders. And I backed him up on it. 13 Q. Did he want military orders 14 for every single weekend duty, every 15 training -- 16 A. Not the first six or eight 17 months, no, sir. 18 Q. Okay. When did he ask for 19 orders? 20 A. Like I said, I don't remember 21 the exact date. I don't know. You're 22 wanting a date, and I can't give it to you. 23 Q. Can you give me an approximate</p>

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<p style="text-align: right;">Page 129</p> <p>1 date?</p> <p>2 A. I already did.</p> <p>3 MR. SPORT: Matt, we've</p> <p>4 produced those documents, those drill</p> <p>5 schedules, but they've not been produced to</p> <p>6 us from Hyundai's records, so we'd also like</p> <p>7 those.</p> <p>8 Q. And, again, just to make sure</p> <p>9 I'm clear, the year that you say that he</p> <p>10 started demanding orders, that was in 2006?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. Do you have any idea</p> <p>13 approximately how many times Greg Prater</p> <p>14 asked you for copies of your orders?</p> <p>15 A. I don't know. Seems like it</p> <p>16 was every month. But to be honest, the</p> <p>17 exact times, no. I have no idea.</p> <p>18 Q. Do you remember when the last</p> <p>19 time he asked you for a copy of your orders</p> <p>20 was?</p> <p>21 A. No, sir. Like I said, I don't</p> <p>22 -- the exact dates and times, no, sir. I</p> <p>23 don't know.</p>	<p style="text-align: right;">Page 131</p> <p>1 statement, no, this ain't Guard related, and</p> <p>2 he was out of it.</p> <p>3 Q. All right. You don't remember</p> <p>4 who told you that?</p> <p>5 A. The ESGR rep. I don't</p> <p>6 remember his name, no.</p> <p>7 Q. Did he provide you any sort of</p> <p>8 paperwork or anything?</p> <p>9 A. No, sir.</p> <p>10 Q. Do you know if Hyundai</p> <p>11 provided him with any paperwork or evidence?</p> <p>12 A. No, sir. He said that -- Per</p> <p>13 the conversation, he said I called them, and</p> <p>14 this is what was said, so I'm out of it.</p> <p>15 Q. Okay.</p> <p>16 A. So I don't know if they</p> <p>17 provided him with paperwork or not. I mean,</p> <p>18 I have no idea.</p> <p>19 Q. Again, I just want to make</p> <p>20 sure I understand what it is he said he was</p> <p>21 told. This didn't have to do with guard</p> <p>22 duty?</p> <p>23 A. That's what they told him.</p>
<p style="text-align: right;">Page 130</p> <p>1 Q. Okay. Was there a period in</p> <p>2 time from the date that you were terminated</p> <p>3 in which you and Greg Prater did not have</p> <p>4 any discussions about your Guard duties?</p> <p>5 A. I don't know. I filed a</p> <p>6 complaint to the ESGR.</p> <p>7 Q. When was that?</p> <p>8 A. I don't know. I don't know if</p> <p>9 it was right before I got fired or after I</p> <p>10 got fired. And they basically told me that</p> <p>11 if Hyundai tells them it's not a military</p> <p>12 matter, they don't have anything to do with</p> <p>13 it. And that's what happened, so that was a</p> <p>14 deadend street.</p> <p>15 Q. Wait. Who said that?</p> <p>16 A. The ESGR representative. I</p> <p>17 can't remember his name. Dan or -- I don't</p> <p>18 remember. I e-mailed him and he e-mailed me</p> <p>19 and he said -- then he called me one time</p> <p>20 and said, well, I've called them, they told</p> <p>21 me this has nothing to do with the Guard, so</p> <p>22 therefore I cannot get involved. And he</p> <p>23 went off, all they got to do was a</p>	<p style="text-align: right;">Page 132</p> <p>1 That's what they're going to say. That's</p> <p>2 common sense. I mean . . .</p> <p>3 Q. And to your knowledge, he</p> <p>4 didn't know anything else?</p> <p>5 A. No, sir.</p> <p>6 Q. And you don't remember his</p> <p>7 name?</p> <p>8 A. I think it was Dan something.</p> <p>9 I don't know. They've got -- They had</p> <p>10 copies of the e-mails. I don't know.</p> <p>11 Q. Who is they?</p> <p>12 A. Hyundai, I think. I don't</p> <p>13 remember. I seen a copy of it somewhere. I</p> <p>14 don't know.</p> <p>15 (Whereupon, Defendant's</p> <p>16 Exhibit No. 3 was marked</p> <p>17 for identification.)</p> <p>18 Q. Okay. Let's go -- I want to</p> <p>19 go through what we've marked as Defendant's</p> <p>20 Exhibit 3, which is a copy of the complaint</p> <p>21 that you and your lawyers filed.</p> <p>22 If you go over a couple of</p> <p>23 pages you'll see a page that's marked</p>

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<p style="text-align: right;">Page 133</p> <p>1 complaint.</p> <p>2 A. All right.</p> <p>3 Q. Did you have an opportunity to</p> <p>4 review it before it got filed?</p> <p>5 A. Yes, sir. I believe so.</p> <p>6 Q. Okay.</p> <p>7 A. I believe. I don't know.</p> <p>8 Like I say, that's been a year ago.</p> <p>9 Q. Okay. Let's turn to page two,</p> <p>10 paragraph seven. In there it says you began</p> <p>11 working on or about November 21, 2005. Do</p> <p>12 you agree with that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. And it says you were</p> <p>15 working as a maintenance technician in the</p> <p>16 stamping maintenance department; is that</p> <p>17 accurate?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And were you working under the</p> <p>20 direct supervision of Kevin Hughes, who is</p> <p>21 identified as a team leader?</p> <p>22 A. Yes, sir, he was a team</p> <p>23 leader.</p>	<p style="text-align: right;">Page 135</p> <p>1 over in the stamping shop.</p> <p>2 Q. Okay. So when did John</p> <p>3 Applegate tell you anything about his</p> <p>4 relationship with Greg Prater?</p> <p>5 A. As in?</p> <p>6 Q. His working relationship, who</p> <p>7 reported to who?</p> <p>8 A. Well, the very first time I --</p> <p>9 I believe it was the first time I went to</p> <p>10 HR. Then after HR, Applegate wanted to know</p> <p>11 why we had gone to HR, I believe.</p> <p>12 Q. When you say "we went to HR,"</p> <p>13 who are you talking about?</p> <p>14 A. I, myself, Barefoot, and</p> <p>15 Weihe.</p> <p>16 Q. All right. And what was that</p> <p>17 about?</p> <p>18 A. It all started with me because</p> <p>19 of Prater and my Guard duty. Then it went</p> <p>20 from that to he told -- I told him, I said,</p> <p>21 well, I'm going to talk to HR about this</p> <p>22 after this meeting. He said HR is not in</p> <p>23 your chain of command, you don't have the</p>
<p style="text-align: right;">Page 134</p> <p>1 Q. Okay. And were you also</p> <p>2 working under Greg Prater?</p> <p>3 A. Yes, sir. He was the</p> <p>4 assistant manager.</p> <p>5 Q. Okay. And it's indicated in</p> <p>6 here that Greg Prater reported to John</p> <p>7 Applegate, is that your understanding?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And who -- Do you know who</p> <p>10 John Applegate is?</p> <p>11 A. As far as I know, he was the</p> <p>12 only American in charge of the American side</p> <p>13 of the maintenance.</p> <p>14 Q. What makes you think that</p> <p>15 Prater was reporting to Applegate?</p> <p>16 A. Only thing we had -- That was</p> <p>17 the way Applegate and Prater put it.</p> <p>18 Q. To who?</p> <p>19 A. All of us in the section.</p> <p>20 Q. Okay. I mean, did you have</p> <p>21 regular conversations with John Applegate?</p> <p>22 A. No, sir. He had an office</p> <p>23 over in the energy building, and we worked</p>	<p style="text-align: right;">Page 136</p> <p>1 authority to talk to them.</p> <p>2 Q. Who said that?</p> <p>3 A. Prater. I said -- Well, I</p> <p>4 said, the handbook we're supposed to be</p> <p>5 going by says HR has an open-door policy,</p> <p>6 and I can talk to them any time. And I</p> <p>7 said, you're telling me my Guard duty is a</p> <p>8 problem, I said, I'm going to talk to HR.</p> <p>9 And Chris Weihe and Barefoot said, well,</p> <p>10 we're going to talk to them too. They had</p> <p>11 their own issues.</p> <p>12 Q. Let me ask you this. So you</p> <p>13 sat down with Greg Prater and Chris Weihe?</p> <p>14 A. No. He called the whole shift</p> <p>15 in. It started out about a schedule. He</p> <p>16 called the whole shift in, some goof up</p> <p>17 about a schedule, the weekend. They got a</p> <p>18 force list, an overtime force list. And he</p> <p>19 would just take his force list and disregard</p> <p>20 it, his own list, and that Applegate had</p> <p>21 signed off on and HR had signed off on, and</p> <p>22 threw it out the window and come out with</p> <p>23 his own list. I had Guard duty that</p>

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<p style="text-align: right;">Page 137</p> <p>1 weekend, I said, I'm not going to be here. 2 He said, you're going to be here or you're 3 going to produce orders. I said, I'm going 4 to talk to HR. 5 Q. Okay. And Chris Weihe and 6 Drake Barefoot were in on that discussion? 7 A. The whole shift was. 8 Q. Okay. And tell me more. What 9 else did Greg Prater say -- Was that the 10 first time you had a problem with him about 11 your Guard duty? 12 A. That's where it all started, 13 yes. 14 Q. Okay. 15 A. Wasn't the first time. I'd 16 been blowing it off up to this point. 17 Q. Okay. Who did you go see -- 18 Well, did you go see -- 19 A. That was the first time I went 20 to HR and complained about it. 21 Q. Is that when you talked to 22 Keisha? 23 A. No, sir. That's when I talked</p>	<p style="text-align: right;">Page 139</p> <p>1 the very first time it happened. 2 Q. Okay. Let me go back to your 3 complaint. In paragraph eight there on page 4 three, it says that harassment of Dees by 5 Hyundai through Prater and Hughes began 6 almost immediately when Prater learned that 7 Dees was a member of the Alabama Army 8 National Guard and had served two tours in 9 Iraq. 10 Did Greg Prater -- How did 11 Greg Prater harass you because you were a 12 member of the Guard or because you served to 13 tours in Iraq? 14 A. He said that -- He made the 15 comment that he had been in Baghdad, he had 16 killed people, he had been a Navy SEAL, he 17 had been a tank commander. And when I asked 18 him where he was at in Baghdad, he says -- 19 when I asked him where he was in Iraq, I was 20 on the southside of Baghdad. I said, what 21 compound? I don't remember, there was so 22 many. I said, what was the name of the 23 compound? I don't remember. You know how</p>
<p style="text-align: right;">Page 138</p> <p>1 to Greg Kimball. He was the very first one 2 I talked to. I was told that he was the man 3 in charge of human resources, and that's who 4 I talked to. 5 Q. And you spoke to him face to 6 face? 7 A. Yes, sir. In his office. 8 Q. Okay. I mean, did you submit 9 anything in writing to him? 10 A. No, sir. 11 Q. Any e-mails at that time? 12 A. No, sir. 13 Q. I mean, did you just show up 14 in his office, did you schedule a meeting 15 with him? 16 A. I took my lunch break. I did 17 not leave my work floor -- 18 Q. What time was your lunch 19 break? 20 A. I don't remember. 21 Q. You were working the night 22 shift? 23 A. No. I was on the day shift</p>	<p style="text-align: right;">Page 140</p> <p>1 it was there was compounds all over the 2 southside of Baghdad. I said, no, there 3 wasn't, there was one, the one I lived in. 4 And I had put him on the spot 5 because I listened to him six or eight 6 months, him and Applegate come around and 7 Prater start running up and talking about 8 how he been in combat and killed so many 9 people. And Applegate was like, yeah, this 10 is my boy. And I got friends that died in 11 Iraq, I've killed people in Iraq, and my 12 friends served proudly in Iraq. And 13 Applegate and HR and everybody was making a 14 disgrace of what we had done. 15 Q. Well, what -- 16 A. When I went to them with my 17 complaints about my Guard duty, being forced 18 to produce military orders, they were like, 19 well, we'll look into the regulations. 20 Q. Did Applegate ever demean you 21 or try to diminish your service in Iraq in 22 any way? 23 A. He basically sat there the</p>

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<p style="text-align: right;">Page 141</p> <p>1 last -- said, well, I know Prater is a hero. 2 And he's -- like I said, basically he's my 3 man, he's my boy. 4 Q. When did he say that? 5 A. I don't remember the exact 6 date. I don't know. 7 Q. Okay. 8 A. Ask him. 9 Q. Other than saying good things 10 about Prater, did he say anything bad about 11 you or your service? 12 A. Directly, no. 13 Q. Indirectly what did he say? 14 A. Well, I -- I don't know. Like 15 I say, that's been a long time ago. 16 Q. All right. I need -- 17 A. And just -- You're asking a 18 question I can't answer. 19 Q. That's fine. If you can't 20 answer, that's all I need to know. 21 A. He'd make comments like: What 22 do you need to go down there for, all y'all 23 do is party.</p>	<p style="text-align: right;">Page 143</p> <p>1 when you do this duty is party? 2 A. To my face, yes. 3 Q. Okay. So did he and Prater 4 say that? 5 A. Prater said that in front of 6 everybody. 7 Q. Okay. Who did John Applegate 8 say it in front of? 9 A. Me. Like I said, I had to 10 have meetings -- If I complained to HR, I 11 had to go see Applegate. 12 Q. There are no witnesses to 13 Applegate saying all y'all do is party; 14 right? 15 A. Nope. 16 Did your lawyers interview him 17 too? 18 Q. Let me ask you about Keisha. 19 Did Keisha ever say anything to you about 20 you or your service in the Guard or Iraq? 21 A. No. She just said I had to 22 have orders before I could be deployed or 23 sent out.</p>
<p style="text-align: right;">Page 142</p> <p>1 Q. Who said that? 2 A. Prater -- 3 Q. I know. Let's talk about 4 Applegate. Let's try to do this in some 5 orderly fashion. 6 A. It's my depo, so I've got to 7 go at my own rate. 8 Q. All right. Let me ask you 9 this: Am I hearing you correctly that you 10 don't have anything to tell me about ways 11 that Applegate either directly or indirectly 12 said bad things about you or your service? 13 A. No. Just, like I said, that I 14 need to focus more on my job and not worry 15 about my Guard duty, and most of the time 16 all they do is party down there anyhow. 17 Q. Is that the worst thing that 18 Applegate said? 19 A. Yeah. Other than like I said, 20 just backing Prater up saying whatever 21 Prater decides is what I'm going with. 22 Q. And are you telling me that 23 John Applegate told you that all y'all do</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. Did Greg Kimball ever say 2 anything about you or your service in the 3 Guard or Iraq or Korea or anywhere else? 4 A. No. The only thing he was 5 worried about was that Prater told us we 6 couldn't talk to human resources. He didn't 7 care about -- basically didn't care about 8 the complaint I was making about Prater 9 harassing me about my Guard. The only thing 10 he worried about was Prater telling we 11 couldn't talk to human resources. 12 Q. Because he disagreed with it? 13 A. Yeah. Because it's basically 14 telling him that he's not over Prater, that 15 Prater can do whatever he wants. That's the 16 only reason he got -- He could care less 17 whether Prater was harassing me about my 18 Guard service. 19 Q. What makes you think he could 20 care less? 21 A. Because nothing was done about 22 it, ever. 23 Q. Let me ask you this: Did</p>

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<p style="text-align: right;">Page 145</p> <p>1 Kimball ever say anything to suggest that 2 either you or your service in Iraq or the 3 Guard was insignificant? 4 A. No. Like I say, the only 5 thing he cared about was Prater saying we 6 couldn't talk to him. 7 Q. Okay. 8 A. But that still doesn't excuse 9 the fact that he let Prater get away with 10 telling me I had to have military orders or 11 I was going to get wrote up for missing 12 work. 13 Q. Did William Ware ever say 14 anything to you about your military service, 15 your Guard duty service in Iraq? 16 A. No. Will's only job there was 17 to keep the union out, keep peace, and tell 18 us that Prater could do whatever he wanted 19 to. 20 Q. Okay. Did anybody other than 21 Applegate and/or Prater say anything about 22 your service in Iraq, your service in the 23 National Guard, or your uniformed service?</p>	<p style="text-align: right;">Page 147</p> <p>1 that during your reserve or Guard duty 2 people partied? 3 A. Yes. 4 Q. And did he ever say anything 5 else that was demeaning or insulting or 6 harassing in any way with respect to your 7 service? 8 A. Other than backing Prater up 9 about having to have military orders, no. 10 Q. Okay. So backing Prater up 11 about orders? 12 A. Yeah. 13 Q. Okay. You've indicated in 14 paragraph nine of your complaint in 15 subparagraph B, that Prater told you you 16 couldn't miss work to attend Guard training? 17 A. Yes, sir. 18 Q. Was that on one occasion or 19 multiple occasions? 20 A. That was on multiple 21 occasions. 22 Q. Okay. And do you remember 23 specifically any of those particular</p>
<p style="text-align: right;">Page 146</p> <p>1 A. No. But like I said, that 2 doesn't change the factor or dismiss the 3 fact that they let him tell me I had to have 4 military orders or I was getting wrote up. 5 Q. All right. And understand, 6 I'm trying to figure out what the evidence 7 is, I'm trying to figure out what people 8 said and what you know. 9 A. Uh-huh. 10 Q. So, I want to figure out who 11 said what. 12 A. All right. 13 Q. Can you think of anybody else, 14 other than Applegate or Prater, that ever 15 said anything or did anything to you that 16 was harassing or demeaning in any way with 17 respect to your uniformed service? 18 A. No. I never had a problem 19 with anyone else about it. 20 Q. Okay. And with respect to 21 Applegate, I just want to make sure I 22 understand exactly what it is he said and 23 did. Am I correct that he made a comment</p>	<p style="text-align: right;">Page 148</p> <p>1 occasions? 2 A. Well, I mean, sometimes he'd 3 just walk up and say, hey, you've got to 4 have orders this weekend or it's a write-up, 5 and sometimes he'd say it in front of 6 everybody. 7 Q. Did he ever write you up for 8 not having orders? 9 A. No, sir. 10 Q. Did anybody ever write you up 11 for anything related to your military 12 service? 13 A. Not that I know of. I don't 14 know. I never signed anything. 15 Q. Okay. And you were never told 16 that you were being written up after the 17 fact? 18 A. After the fact, no, sir. He 19 just still kept coming up harassing me 20 saying where's your orders, where's your 21 orders. 22 Q. Did you ever not attend any 23 Guard duty because of --</p>

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<p style="text-align: right;">Page 149</p> <p>1 A. Because of work?</p> <p>2 Q. Because of Greg Prater or</p> <p>3 work?</p> <p>4 A. I don't know. I'd have to go</p> <p>5 back and look at my LES's and see.</p> <p>6 Q. Let me ask you this: Do you</p> <p>7 remember ever skipping any Guard duty on a</p> <p>8 weekend, or a week-long duty, or any sort of</p> <p>9 training because of your job at Hyundai?</p> <p>10 A. I don't know. I may have.</p> <p>11 Q. But you don't remember it?</p> <p>12 A. I may have. I don't know.</p> <p>13 Q. Do you remember it?</p> <p>14 A. I said I don't know.</p> <p>15 Q. Okay. And I assume you</p> <p>16 haven't provided your attorneys with any</p> <p>17 information to suggest you ever missed any</p> <p>18 Guard duty because of your work at Hyundai?</p> <p>19 A. Like I said, I can go back and</p> <p>20 look at my LES's and see.</p> <p>21 Q. All right. Let me ask you</p> <p>22 this: In paragraph 9-E of your complaint it</p> <p>23 says: Prater attempted to force Dees'</p>	<p style="text-align: right;">Page 151</p> <p>1 Shane said out of his own mouth that that's</p> <p>2 what Prater had said and he made the</p> <p>3 statement -- he wrote a statement saying</p> <p>4 that.</p> <p>5 Q. Okay. Who from team relations</p> <p>6 were they with?</p> <p>7 A. Will Ware.</p> <p>8 Q. Were there any other instances</p> <p>9 that fall within what you've described in</p> <p>10 paragraph 9-E?</p> <p>11 A. Yeah. One other time that I</p> <p>12 had a breakdown, Prater tried to get Shane</p> <p>13 to say that I said, heck with the breakdown,</p> <p>14 let's just go to lunch. And I never stated</p> <p>15 that. That was Shane, myself, and Drake</p> <p>16 Barefoot there. And Drake was the one that</p> <p>17 made the comment, but Prater wouldn't talk</p> <p>18 to Drake. And I asked him what happened, he</p> <p>19 called Shane in once again trying to get</p> <p>20 Shane to say I had caused the breakdown and</p> <p>21 just walked off and left it, when Drake had</p> <p>22 to run him down that I'm the one that stated</p> <p>23 it --</p>
<p style="text-align: right;">Page 150</p> <p>1 coworkers to say that Dees had violated</p> <p>2 Hyundai's policies and procedures when</p> <p>3 Prater knew it was not true.</p> <p>4 Do you have any idea from a</p> <p>5 factual perspective what that means?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Tell me about that.</p> <p>8 A. About a month before I was</p> <p>9 fired he tried to get one of my coworkers to</p> <p>10 say that I was creating a hostile work</p> <p>11 environment.</p> <p>12 Q. Who did he say that to?</p> <p>13 A. Shane Archer.</p> <p>14 Q. What did he say to Shane?</p> <p>15 A. He wanted Shane to say -- He</p> <p>16 called Shane in the office with team</p> <p>17 relations and wanted Shane to specifically</p> <p>18 say that Leon was creating a hostile work</p> <p>19 environment.</p> <p>20 Q. You think he called Shane into</p> <p>21 a meeting with team relations?</p> <p>22 A. We all saw Shane go in the</p> <p>23 office with him and team relations. And</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. That you stated what?</p> <p>2 A. That I didn't, that Drake</p> <p>3 stated it.</p> <p>4 Q. Did you walk off the</p> <p>5 breakdown?</p> <p>6 A. No.</p> <p>7 Q. You did not?</p> <p>8 A. No. We took our lunch shifts</p> <p>9 -- Half the shift come in an hour early and</p> <p>10 other shift came in an hour late. We split</p> <p>11 our lunch breaks up. We had a breakdown in</p> <p>12 my section. The SOP asked -- that I was</p> <p>13 told to stay in is where they supposedly</p> <p>14 caught me sleeping. It's out in open view</p> <p>15 of everybody. And I was working on it, we</p> <p>16 had worked fifteen minutes over into our</p> <p>17 lunch break, and myself and Drake was</p> <p>18 working on it. I handed my radio to Shane,</p> <p>19 said call Kevin and get him to get the other</p> <p>20 ones out here, they're fifteen minutes into</p> <p>21 our lunch break, they're over theirs, tell</p> <p>22 them to come finish up. Shane went up and</p> <p>23 took the radio, went downstairs, he found</p>

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<p style="text-align: right;">Page 153</p> <p>1 Kevin told him what was going on, me and 2 Drake was still working on the breakdown. 3 Kevin came up, everything was explained to 4 him, told him what he had to do to fix it. 5 Drake said, heck with this, he used a 6 four-letter word, said, we're going to 7 lunch. Kevin said, well, I don't know how 8 to fix this. Drake says, you need to step 9 up and do your job. We told you how to fix 10 it, we're going to lunch. And the other 11 shift came out, took the breakdown. 12 When I came in the next night, 13 the same thing, Jim Brookshire and Prater 14 and them was in there telling me that I had 15 walked off of a breakdown and left the line 16 down. 17 Q. You said Brookshire was there? 18 A. Yes, sir. Trying to chew me 19 out for having a breakdown. Drake seen what 20 was going on, come in and to talk to them. 21 They said, no, we got this. He called Shane 22 in and tried to get Shane to say Leon said 23 such and such. Drake come and said this is</p>	<p style="text-align: right;">Page 155</p> <p>1 are saying. 2 Q. Whose statements? 3 A. Will Ware's and Prater's. 4 Q. Okay. 5 A. That's what he admitted to the 6 coworkers after I was fired. This Wendy 7 Warner totally bypassed all their own 8 policies in their handbook for termination, 9 their termination procedure, and fired me 10 right off the bat, off someone else's word. 11 That's what I'm saying, everybody knew about 12 the problem, and everybody supported him on 13 every decision he made; they supported 14 Applegate, human resources. 15 Q. Can you think of any other 16 instances that fit within paragraph 9-E of 17 your complaint? 18 A. I don't know. You keep 19 asking, there may be something. I don't 20 know. 21 Q. That's why I keep asking. 22 A. I don't know. Maybe. I don't 23 remember anything else right now at this</p>
<p style="text-align: right;">Page 154</p> <p>1 what happened, I'm the one that said what 2 you're trying to blame on him, this is how 3 it happened. They didn't want to talk to 4 Drake, he had to force them to listen. 5 Q. Were you written up or 6 anything for that? 7 A. No. I would have been if it 8 hadn't been for Drake. 9 Q. Was there another incident 10 where you walked off your job to your 11 recollection? 12 A. I don't believe so. After 13 reading all the stuff from Hyundai, 14 apparently they had a lot to say about me. 15 Q. But to your knowledge, this 16 incident that you're talking about, was it 17 investigated by team relations? 18 A. No. It was investigated by 19 Prater, the same one who investigated me for 20 supposedly sleeping, and firing me. He did 21 the sole investigation. 22 Q. You think Prater did? 23 A. That's what their statements</p>	<p style="text-align: right;">Page 156</p> <p>1 moment. 2 Q. Okay. Paragraph 9-F of the 3 complaint talks about having to clean out 4 the pit. 5 A. Yes, sir. 6 Q. All right. Let's talk a 7 little bit about the pit. Is there just one 8 pit at the plant? 9 A. Yes, sir. It's all one big 10 system. 11 Q. I mean, is there one pit or 12 two pits or three? 13 A. There was one -- After I 14 answer this, we've got to go to lunch. My 15 stomach is growling. 16 There's a pit under each 17 press. 18 Q. All right. So there's more 19 than one pit? 20 A. There's two presses and one 21 pit under the -- what's that other -- I 22 can't remember what that other press is 23 called, where it all -- scrap comes from two</p>

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<p style="text-align: right;">Page 157</p> <p>1 pits on a metal conveyor and goes down to 2 that where it's all crushed into one bale 3 and sent out and sold for scrap. 4 Q. Okay. 5 A. But I was always sent under 6 press one or two pit to clean up. 7 Q. Okay. 8 A. It's a dangerous process. 9 Because when you get down there, you have no 10 communication with nobody. If anything 11 happens to you, you're there until somebody 12 decides to come looking for you. 13 Q. Let me ask you this: What 14 evidence do you have to suggest that anybody 15 at Hyundai assigned you to clean the pit to 16 try to get you to quit your job? 17 A. Because after all this stuff 18 come up and my unit sent the letter, it 19 wasn't but a few weeks after that, I was 20 getting sent down to the pit to clean it, at 21 least once, two or three times a week, 22 sometimes three or four times a week. 23 Wasn't even our responsibility, production</p>	<p style="text-align: right;">Page 159</p> <p>1 Q. So am I right, that the pit, 2 it wasn't like something that was cleaned on 3 schedule? 4 A. No, sir. Well, it was 5 supposed to be but, no, sir. 6 Q. Okay. Wasn't like there was a 7 schedule posted on the wall for who was 8 supposed to clean it when and that kind of 9 stuff? 10 A. No, sir. That was a 11 production thing. But it didn't turn out to 12 be a production thing. 13 Q. How many times do you think 14 you had to clean the pit? 15 A. God, I don't know. Like I 16 said, several weeks, at least two, three, 17 four times a week. 18 Q. How often -- 19 A. Huh? 20 Q. How often would your coworkers 21 in maintenance clean it? 22 A. Nowhere near -- Mark Hanks 23 cleaned it once I think.</p>
<p style="text-align: right;">Page 158</p> <p>1 was supposed to clean the pit. 2 Q. Production was supposed to 3 clean the pit? 4 A. Yes, sir. Like I said, we had 5 radios, but when you get to the pit, you 6 have no communication. 7 Q. Why -- I mean, if somebody 8 from production is supposed to clean the 9 pit, did anybody from maintenance ever clean 10 the pit before you? 11 A. Yes, sir. 12 Q. All right. 13 A. When they would make Prater 14 mad. 15 Q. Okay. 16 A. Or if they made Kevin mad or 17 if they made Jim Brookshire mad or if they 18 made Craig Stapley mad. 19 Q. Those are production guys, 20 Brookshire and Stapley? 21 A. Doesn't mean nothing though. 22 If they told you to go clean the pit, you 23 had to go clean the pit.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Okay. 2 A. Other than that, I don't 3 remember anybody being singled out to go 4 clean it. 5 Q. Did anybody clean it as often 6 as you did? 7 A. No, sir. 8 Q. Did anybody clean it more than 9 you did? 10 A. No, sir. 11 Q. And other than Mark Hanks 12 cleaning it once, can you think of anybody 13 else who had to clean it one or more times? 14 A. Not individually. Sometimes 15 he'd send a whole shift down there once 16 every three or four months to clean it. 17 Q. And is it your testimony the 18 pit got cleaned based purely on somebody 19 like Hughes or Prater or Brookshire or 20 Stapley telling you or your coworkers to go 21 do it? 22 A. Yes, sir. 23 Q. All right. Let's say if you</p>

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<p style="text-align: right;">Page 161</p> <p>1 were working on -- is the -- Are the presses 2 numbered one and two? 3 A. Yes, sir. 4 Q. Would your maintenance duties 5 be assigned to either press one or press two 6 on a given shift? 7 A. There was maintenance 8 personnel on my shift assigned to those 9 presses. That wasn't even my area of 10 responsibility. 11 Q. Okay. What was your area of 12 responsibility? 13 A. SOPS. 14 Q. Okay. 15 A. When we came in, we was told 16 to get our tool bags, get the brief from the 17 off-going shift, and go to our areas of 18 responsibility. Mark Hanks had to stay on 19 press one, Darrel Gray press two, Drake 20 Barefoot on that other stamping press, I 21 can't remember what it was called, Chris 22 Weihe had to handle ASRS, and I had the 23 SOPS, and Shane was a floater.</p>	<p style="text-align: right;">Page 163</p> <p>1 Q. And that's five days a week? 2 A. Sometimes it's seven days a 3 week. 4 Q. Sometimes seven days a week. 5 A. We'd work a weekend off, 6 weekend on. Sometimes we might get a Sunday 7 off. I mean, I never cleaned it seven days 8 in a row, no. 9 Q. Okay. 10 A. Even after I complained about 11 it. 12 Q. Did you clean it five days in 13 a row? 14 A. Fricken Applegate told me 15 don't worry about it, it all pays the same. 16 Q. Did you ever clean it five 17 days in a row? 18 A. I may have. I don't know. I 19 mean, I cleaned it so many times so much, I 20 don't know. 21 Q. Is it your testimony that you 22 cleaned it significantly more than any of 23 your coworkers?</p>
<p style="text-align: right;">Page 162</p> <p>1 Q. Okay. 2 A. And I ended up running the 3 SOPS for the production people; I went above 4 and beyond my spectrum of duty. I was 5 supposed to be there for breakdowns. If it 6 broke down, I was supposed to fix it. They 7 was only allowed to run so many parts, like 8 so many Sonata right side outers, they get 9 to running good and they'd run way over 10 their quota. I'd have to go up there and 11 operate the system for them so they could do 12 that. I became instead of -- basically a 13 production worker. And if I hadn't have 14 done it, they wouldn't have ran. So it 15 ain't like I was a slouch. I could have 16 said, no, that's not my scope of duty. I 17 helped out. You can ask production, I even 18 went back there sometimes and I'd help them 19 catch panels if they was getting in a bind. 20 Q. In your complaint it says you 21 cleaned the pit almost daily some weeks; is 22 that true? 23 A. Yes, sir.</p>	<p style="text-align: right;">Page 164</p> <p>1 A. Yes, sir. And they'll tell 2 you that. 3 Q. Okay. 4 A. As they told -- I believe -- I 5 don't know, you'd have to ask the lawyer who 6 interviewed the three. 7 Q. I've talked to him. 8 Anyway, let me ask you this, 9 in paragraph ten it says: Applegate wrote 10 up about each and every action by Prater and 11 Hughes. He stood behind each and every 12 decision they made in running the stamping 13 department and refusing to act on or even 14 investigate complaints to Applegate about 15 Prater and Hughes. 16 We've talked a lot about what 17 Applegate said in terms of it's Prater's 18 department and he runs it. Is there more to 19 that story than you and I have talked about 20 so far? 21 A. No. Like I said, even if I 22 complained about cleaning the pit all the 23 time, and Applegate asked me, said, what's</p>

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<p style="text-align: right;">Page 165</p> <p>1 it to you, it all pays the same? I said, 2 well, it seems funny after this letter came, 3 all of a sudden I'm cleaning the pit all the 4 time. He said, well, that letter don't have 5 nothing to do with this, it's just a 6 maintenance thing. I said, well, we don't 7 normally clean it. Well, it all pays the 8 same, don't worry about it.</p> <p>9 Q. Did you talk to him about the 10 fact that it's typically production that 11 cleans the pit but they're making 12 maintenance people clean it?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And he said he's okay with 15 that --</p> <p>16 A. Don't worry about it, it all 17 pays the same.</p> <p>18 Q. In paragraph eleven of your 19 complaint you say that the harassment --</p> <p>20 A. Are you ready for chow?</p> <p>21 Q. Not yet.</p> <p>22 I mean, if you're ready to go, 23 we'll go.</p>	<p style="text-align: right;">Page 167</p> <p>1 the exhibit that came up, was identified 2 initially by Mr. Dees, which had not been 3 previously identified in Mr. Dees' discovery 4 responses by Mr. Dees or his counsel. Once 5 it was identified by Mr. Dees during his 6 deposition, we were able to contact the 7 Hyundai plant and have it faxed to the court 8 reporter's office. We've now marked it as 9 Defendant's Exhibit 4 and provided a copy to 10 Mr. Dees' lawyers, who had not identified it 11 previously.</p> <p>12 MR. KILBORN: I also note for 13 the Record that the letter that Sergeant 14 Barnes wrote has not been produced, which is 15 a key letter in this case. And we've asked 16 that it be produced, that a search be made 17 for it. That's a letter identified in 18 Franklin D. Barnes Dees 00002 dated March 19 26, 2007.</p> <p>20 MR. JOHNSON: Is that all?</p> <p>21 MR. KILBORN: That's it. Go 22 ahead.</p> <p>23 Q. Mr. Dees, we're going back on</p>
<p style="text-align: right;">Page 166</p> <p>1 A. I'm hungry.</p> <p>2 MR. JOHNSON: Y'all ready to 3 take a break?</p> <p>4 (Recess taken.)</p> <p>5 MR. KILBORN: I want to mark 6 this as --</p> <p>7 MR. JOHNSON: It's marked as 8 Exhibit 4.</p> <p>9 (Whereupon, Defendant's 10 Exhibit No. 4 was marked 11 for identification.)</p> <p>12 MR. KILBORN: Defendant's 13 Exhibit 4 was just produced about ten 14 minutes after one, during Leon Dees's 15 deposition; it should have been produced 16 before. It's obviously on the subject of 17 Guard duty; it's obviously on the subject of 18 human resources; and on the subject of Leon 19 Dees. And I've asked -- I've told counsel I 20 want to redepose Wendy Warren on the subject 21 matter of this e-mail.</p> <p>22 MR. JOHNSON: Just for the 23 Record, with respect to Exhibit 4, this was</p>	<p style="text-align: right;">Page 168</p> <p>1 the Record. I've got a couple of questions 2 to ask you.</p> <p>3 We've now marked an exhibit 4 that you mentioned previously in your 5 deposition, that we've gone back and gotten, 6 we've marked as Exhibit Number 4. I know 7 that you and your lawyers have had an 8 opportunity to review that exhibit; is that 9 accurate?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. And is that, in fact, 12 the e-mail that you testified to prior to 13 our lunch break?</p> <p>14 A. This is it.</p> <p>15 Q. Okay.</p> <p>16 A. 6 February '07. I asked 17 Mr. Kimball for a meeting, because, like I 18 said, both times I even had to file the 19 complaint through my unit. And after 20 positive results, meeting the first time, we 21 went there, Prater told us we couldn't talk 22 to HR. My unit stayed abreast of the 23 meeting, and it would die back down for a</p>

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<p style="text-align: right;">Page 169</p> <p>1 week, and then everything else would kick 2 back up. Nothing changed over all. I'm 3 currently working night shift, and we would 4 greatly appreciate a meeting at your 5 convenience. And a week or two later I was 6 fired. 7 Q. Now, if I could just look at 8 that. Again, this e-mail was sent on 9 February 6th of '07, does that sound right 10 to you? 11 A. Yes, sir. 12 Q. At that time, do you know 13 whether Greg Kimball was actively employed 14 or on leave from the plant? 15 A. No one had told us he wasn't 16 there. Like I said, I worked night shift. 17 Q. Did you know him personally? 18 A. Did I know him personally? 19 You mean away from the plant? 20 Q. No. I mean, did you know him? 21 You'd know him if he walked into the room 22 and talked to him? 23 A. Yes, sir.</p>	<p style="text-align: right;">Page 171</p> <p>1 A. Yes, sir. 2 Q. Was that a meeting -- Was that 3 the year before you got terminated in that 4 fall period that you testified to? 5 A. Yes, sir. 6 Q. Okay. And where did that 7 meeting take place? 8 A. In Greg Kimball's office. 9 Q. Okay. And am I right that 10 neither you nor Greg Kimball produced 11 anything in writing after that meeting? 12 A. No, sir. 13 Q. And one of the things that it 14 says here on Defendant's Exhibit Number 4, 15 you'd indicate issues that have arisen on my 16 shift between Greg Prater, Kevin Hughes, and 17 yourself. What was the issue with Kevin 18 Hughes? 19 A. Like I stated earlier, Kevin 20 had a history of jumping on employees. 21 And -- 22 Q. And when you say jumping on 23 employees, was that having to do with</p>
<p style="text-align: right;">Page 170</p> <p>1 Q. Had you talked to him before? 2 A. Yes, sir. 3 Q. Had you talked to him 4 previously about any issues you may have had 5 with Greg Prater? 6 A. It wasn't Prater specifically. 7 Like I said before, he was the very first 8 person I talked to when I went to HR. 9 Q. Okay. But you didn't talk to 10 him about Prater specifically? 11 A. Well, about Prater and 12 Applegate and having a problem with my Guard 13 duty, yes, sir, I did. 14 Q. Okay. And what -- And I'm 15 just trying to think back to what we talked 16 about earlier this morning. I want to make 17 sure I'm right. That was what you had 18 testified to earlier, the year before you 19 got fired in the -- I think you testified in 20 the fall? 21 A. Do what now? 22 Q. The meeting -- That first 23 meeting you had with Greg Kimball.</p>	<p style="text-align: right;">Page 172</p> <p>1 military duty or just his style of 2 management? 3 A. His style of management. I 4 mean, he had -- he had jumped on two or 5 three other employees, one of them twice. 6 He'd get up in their face and holler at them 7 and bow up on them and intimidate them. And 8 he did the same thing to me, and I asked 9 him, I said: Are you bowing up on me? And 10 he made some comment, and I turned around 11 and I left. 12 Q. Now, did that have anything to 13 do with your military service or your 14 reserve duties or anything like that? 15 A. That particular incident? I 16 -- I don't know. After the letter came in, 17 and I started having all these problems is 18 when Kevin started -- I mean, that's when he 19 started birddogging me. 20 Q. When who started birddogging 21 you? 22 A. Kevin Hughes. 23 Q. When did that start?</p>

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<p style="text-align: right;">Page 173</p> <p>1 A. After -- Like I said, after my 2 letter from the unit came in. 3 Q. Okay. That's the letter from 4 Sergeant Barnes? 5 A. Yes, sir. 6 Q. Do you remember when that 7 letter came in? 8 A. As I stated earlier, no, sir. 9 Q. Do you recall who it was sent 10 to specifically? 11 A. Yes, sir. Like I stated 12 before, Greg Kimball. 13 Q. Okay. Did you ever talk to 14 Greg Kimball about whether or not he'd 15 actually gotten that letter? 16 A. No, sir, I did not. 17 Q. Do you have any evidence that 18 Greg Kimball or anybody else in Hyundai 19 management received the letter? 20 A. I said just John Applegate 21 saying: Don't worry about that letter, 22 we've seen it, something to that effect. I 23 don't remember exactly what his words were,</p>	<p style="text-align: right;">Page 175</p> <p>1 A. No, sir. The two separate 2 occasions was what it says, it was two 3 separate occasions. 4 Q. But I'm trying to figure out 5 when those two separate occasions were and 6 who were they with? 7 A. What do you mean? 8 Q. On February 6th you basically 9 say you had two separate occasions that you 10 had discussions with human resources; right? 11 A. Yes, sir. 12 Q. Okay. I want -- I'm just 13 trying to figure out if we can pin down when 14 those were and who you talked to. 15 A. It's like I stated earlier 16 this morning, I don't know the exact dates. 17 That was over a year ago. No, I don't. I 18 don't know specific dates, times, no, sir. 19 Q. Do you recall who they were 20 with? 21 A. Like I stated this morning, 22 the first meeting was with Greg Kimball -- 23 Q. Okay. That's one.</p>
<p style="text-align: right;">Page 174</p> <p>1 but, yeah, he admitted the letter was there. 2 Q. Do you remember when he said 3 that? 4 A. I think it was the second 5 meeting I had with him. I don't remember. 6 Q. Second meeting with Applegate? 7 A. Yeah. I mean, I don't know to 8 be honest. I can't say either way. 9 Q. How many meetings did you have 10 with Applegate? 11 A. I don't know. Two, three. 12 Whatever I said this morning. 13 Q. Okay. In your letter to Greg 14 Kimball that we've marked as Exhibit 4 you 15 say: I have talked to human resources on 16 two separate occasions regarding Greg Prater 17 and also filed a complaint on him through my 18 National Guard unit. 19 A. Yes, sir. 20 Q. Were the two separate 21 occasions the one time that you talked to 22 Greg Kimball and then when you talked to 23 Keisha?</p>	<p style="text-align: right;">Page 176</p> <p>1 A. -- in HR, and the last two I 2 believe was with Keisha. 3 Q. Okay. So other than Greg 4 Kimball and Keisha, you don't recall having 5 discussions with anybody in HR? 6 A. No, sir. 7 Q. No, sir, I'm wrong or no, sir, 8 you didn't have meetings with anyone else? 9 A. No, sir, I don't recall having 10 meetings with anyone else in HR. 11 Q. And did Keisha ever say 12 anything to you that in any way demeaned or 13 insulted your prior uniformed service? 14 A. No, sir. 15 Q. Do you have any reason to 16 think that Keisha in any way influenced the 17 decision to terminate your employment? 18 A. I have no idea who had any -- 19 I don't know. You're standing at work, 20 somebody comes up and tells you you're 21 fired, I mean -- 22 Q. Let me ask you this: Do you 23 have any information to suggest who was</p>

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<p style="text-align: right;">Page 177</p> <p>1 involved in the decision to terminate your 2 employment? 3 A. Rephrase. 4 Q. Do you have any knowledge as 5 to who was involved in the decision to 6 terminate your employment? 7 A. Nope. I mean -- No. 8 Q. Do you know whether Greg 9 Prater was involved? 10 A. Well, I read statements that 11 he wrote. 12 Q. Other than the statements that 13 he wrote -- 14 A. And he told the coworkers that 15 he did the investigation and it was his 16 decision. 17 Q. Okay. Who did he say that to? 18 A. My shift. But, they also said 19 that -- I believe it was that -- I don't 20 know, how was it phrased? 21 He didn't make the actual -- 22 He can only make a recommendation. The 23 actual decision had to come from HR.</p>	<p style="text-align: right;">Page 179</p> <p>1 Q. What routine? 2 A. Of getting harassed, are you 3 going to duty this weekend? Where is your 4 orders? Are you coming back Monday? Do you 5 have my orders? You're going to get wrote 6 up if you miss work. 7 Q. Did Greg Prater ever do 8 anything other than demand to see orders or 9 suggest that he was going to write you up if 10 you missed work? 11 A. As in? 12 Q. You tell me. I just want to 13 know what he did. 14 A. I mean, other than hounding me 15 about my orders, harassing me about my duty, 16 HR and Applegate and basically team 17 relations and everyone backing him up, that 18 was pretty much enough. 19 Q. Okay. So would it be fair to 20 state that that's all that Greg Prater did 21 or that Applegate or HR did with respect to 22 your service? 23 A. Well, yeah, I reckon.</p>
<p style="text-align: right;">Page 178</p> <p>1 Q. Okay. And do you know who in 2 HR was involved in that decision-making 3 process? 4 A. No, sir, I do not. 5 Q. Also on Exhibit 4 it indicates 6 here that -- or you say: There have been 7 positive results from both meetings and once 8 again I am seeking your help. 9 What were the positive results 10 that came from -- 11 A. Well, the first time Prater 12 said: Y'all can't go to HR, that's not in 13 your chain of command. 14 Q. Okay. 15 A. And I -- Everything with me 16 was military term acronyms, because that's 17 all I've ever known, that's how I live my 18 life. And HR jumped all over him. Like I 19 said, that was only for their benefit. 20 Said, yeah, you can talk to us any time you 21 want. And everything calmed down for a few 22 days or a week, but then same old routine 23 kicked in.</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. Okay. Now, let's look at 2 paragraph twelve of your complaint. And I'm 3 going to mark -- 4 MR. SPORT: Matt, do you have 5 another copy of that? 6 MR. JOHNSON: Yeah. I'm 7 getting it. Hang on. 8 Q. I'm going to mark as Exhibit 5 9 a fax cover letter and a letter -- 10 (Off-the-Record discussion 11 was held.) 12 (Whereupon, Defendant's 13 Exhibit No. 5 was marked 14 for identification.) 15 Q. All right. Mr. Dees, in 16 paragraph twelve of your complaint it 17 references an October 23, 2006, letter from 18 Sergeant Franklin Barnes -- 19 A. I said on or about October 23. 20 Q. On or about October 23, 2006, 21 Franklin Barnes, of Dees' Guard unit wrote a 22 letter of instruction to the human resources 23 department at Hyundai. And if you look at</p>

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<p style="text-align: right;">Page 181</p> <p>1 what we've marked as Exhibit 5, that is</p> <p>2 apparently a letter from Sergeant Barnes --</p> <p>3 it says it's a memorandum for Record.</p> <p>4 Are you aware of anything else</p> <p>5 that Sergeant Barnes produced that was</p> <p>6 produced to Hyundai?</p> <p>7 A. No, sir.</p> <p>8 Q. And let me -- I won't --</p> <p>9 A. This is not the actual letter</p> <p>10 because he didn't keep a copy of the actual</p> <p>11 letter. This is in reference to what he had</p> <p>12 stated -- basically stated.</p> <p>13 Q. Okay. And let me make sure</p> <p>14 and --</p> <p>15 A. On or about 23 October, that's</p> <p>16 a military term, if you're not sure of the</p> <p>17 date, exact date, that's what we use.</p> <p>18 MR. JOHNSON: Okay. And let</p> <p>19 me make sure, Mr. Kilborn or Mr. Sport,</p> <p>20 we've definitely got one and two here, and I</p> <p>21 don't want to -- if I'm overlooking or</p> <p>22 misunderstanding, the 10/23 letter --</p> <p>23 MR. SPORT: We have not</p>	<p style="text-align: right;">Page 183</p> <p>1 department?</p> <p>2 A. Yes, sir. It's not the exact</p> <p>3 same letter, no. Sergeant Barnes didn't</p> <p>4 keep a copy of the letter that was sent.</p> <p>5 Q. Did he send a copy to you?</p> <p>6 A. No, sir. I didn't ask him to.</p> <p>7 Q. Well, regardless of what you</p> <p>8 asked him to do, did he send one?</p> <p>9 A. No, sir.</p> <p>10 Q. Okay. Do you know if he sent</p> <p>11 one to anybody else?</p> <p>12 A. No, sir.</p> <p>13 Q. And you -- Do you know if -- I</p> <p>14 want to make sure I understand. Did he keep</p> <p>15 a copy and lost it or did he not keep a copy</p> <p>16 to your knowledge?</p> <p>17 A. To my knowledge, he did not</p> <p>18 keep a copy.</p> <p>19 Q. Okay.</p> <p>20 A. And it not being an official</p> <p>21 government document, he wasn't required to</p> <p>22 keep a copy.</p> <p>23 Q. Okay. Then is it your</p>
<p style="text-align: right;">Page 182</p> <p>1 produced it because we don't have a copy of</p> <p>2 it.</p> <p>3 MR. JOHNSON: Okay.</p> <p>4 MR. SPORT: It's our</p> <p>5 understanding that Mr. Barnes cannot locate</p> <p>6 a copy of it. Based on his notes, and it</p> <p>7 would roughly correspond, I believe, to</p> <p>8 Mr. Dees' drill date of that month, that</p> <p>9 that's when he wrote the letter. And based</p> <p>10 on that, we're requesting that letter from</p> <p>11 human resources.</p> <p>12 MR. JOHNSON: All right.</p> <p>13 So --</p> <p>14 MR. SPORT: Is that what you</p> <p>15 were asking?</p> <p>16 MR. JOHNSON: I think so.</p> <p>17 Thank you.</p> <p>18 MR. SPORT: Okay.</p> <p>19 Q. So, Mr. Dees, it's at least my</p> <p>20 understanding that what we've got here as</p> <p>21 Exhibit 5, that's different from the letter</p> <p>22 we were talking about earlier that was sent</p> <p>23 by Mr. Barnes to the human resources</p>	<p style="text-align: right;">Page 184</p> <p>1 testimony it wasn't an official government</p> <p>2 document?</p> <p>3 A. It was a letter -- When you</p> <p>4 have a problem, you go to your unit.</p> <p>5 Q. Okay. And he was actually</p> <p>6 your subordinate in the unit; correct?</p> <p>7 A. Yes, sir. But he's the full</p> <p>8 time AGR person, so it's his job to take</p> <p>9 care of stuff like that.</p> <p>10 Q. Okay. Did you ask anyone who</p> <p>11 you were subordinate to to write you a</p> <p>12 letter like that?</p> <p>13 A. No, sir, I did not. I went to</p> <p>14 the unit, I talked to Sergeant Barnes.</p> <p>15 Sergeant Barnes called Sergeant Richberg my</p> <p>16 superior. Sergeant Richberg was the senior</p> <p>17 man, he's retired now, that was off Sergeant</p> <p>18 Richberg's recommendations.</p> <p>19 Q. Okay. Tell me Sergeant</p> <p>20 Richberg's full name?</p> <p>21 A. Wendell Richberg.</p> <p>22 Q. And do you know where he</p> <p>23 lives?</p>

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<p style="text-align: right;">Page 185</p> <p>1 A. Anniston.</p> <p>2 Q. Anniston. Have you spoken to</p> <p>3 him since this lawsuit was filed?</p> <p>4 A. Friday night.</p> <p>5 Q. Okay. Did y'all talk about</p> <p>6 this lawsuit?</p> <p>7 A. No, sir.</p> <p>8 Q. Did you talk about your</p> <p>9 deposition at all?</p> <p>10 A. No, sir.</p> <p>11 Q. Okay. What about Sergeant</p> <p>12 Barnes, do you still talk to him?</p> <p>13 A. Every month at Guard. He</p> <p>14 works for me.</p> <p>15 Q. At Guard duty. Okay. And,</p> <p>16 again, going back to Exhibit 5 that we've</p> <p>17 marked today, is the second page of that a</p> <p>18 memo that you're familiar with?</p> <p>19 A. The actual letter?</p> <p>20 Q. Yes.</p> <p>21 A. Yes, sir.</p> <p>22 Q. You're familiar with that?</p> <p>23 A. I read it once.</p>	<p style="text-align: right;">Page 187</p> <p>1 Q. He retyped this memo?</p> <p>2 A. I'm just assuming. Like I</p> <p>3 said, you'll have to ask Sergeant Barnes</p> <p>4 this information.</p> <p>5 Q. Okay.</p> <p>6 A. I'm not going to sit here and</p> <p>7 answer for him because I don't know.</p> <p>8 Q. I want to know what you know.</p> <p>9 Do you know whether or not this is a retyped</p> <p>10 memorandum or something he'd done --</p> <p>11 A. No, sir, I do not know. Like</p> <p>12 I stated, I do not know. You'll have to ask</p> <p>13 Sergeant Barnes, and he'll be glad to talk</p> <p>14 to you.</p> <p>15 Q. Do you know where this copy</p> <p>16 came from?</p> <p>17 A. Sergeant Barnes. It's got his</p> <p>18 signature on it.</p> <p>19 Q. So I'm assuming Sergeant</p> <p>20 Barnes kept a copy of this one?</p> <p>21 A. Apparently so. I don't know</p> <p>22 that for sure either. I'm not going to say</p> <p>23 either way.</p>
<p style="text-align: right;">Page 186</p> <p>1 Q. Did you read it before</p> <p>2 Sergeant Barnes sent it?</p> <p>3 A. No, sir, I do not.</p> <p>4 Q. Do you know if Sergeant Barnes</p> <p>5 sent it to anybody?</p> <p>6 A. Sergeant Barnes told me that</p> <p>7 he sent it to Greg Kimball.</p> <p>8 Q. He said he sent it to Greg</p> <p>9 Kimball?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Did he indicate he had sent it</p> <p>12 to anybody other than Greg Kimball?</p> <p>13 A. No, sir.</p> <p>14 Q. Did he send a copy to you?</p> <p>15 A. No, sir.</p> <p>16 Q. I assume he saved a copy of</p> <p>17 this?</p> <p>18 A. No, sir.</p> <p>19 Q. Do you know where this -- this</p> <p>20 copy came from?</p> <p>21 A. Sergeant Barnes retyped it.</p> <p>22 You'll have to ask Sergeant Barnes this</p> <p>23 info. This, I do not know.</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. And not a copy of the other</p> <p>2 one?</p> <p>3 A. Well, the other one shouldn't</p> <p>4 have been a problem. He has to do it for</p> <p>5 civilian law enforcement officers. I mean,</p> <p>6 he didn't think nothing about it.</p> <p>7 Q. Did you ask him to prepare</p> <p>8 this Exhibit Number 5?</p> <p>9 A. I asked him if he had a copy</p> <p>10 of the letter he sent. He said he would</p> <p>11 check and see. And he said he did not have</p> <p>12 a copy. I said, look, what did you write?</p> <p>13 I said I need a letter about what you said,</p> <p>14 and that's what he produced. Anything other</p> <p>15 than that, you'll have to ask Sergeant</p> <p>16 Barnes.</p> <p>17 Q. Okay. So from what you're</p> <p>18 telling me, either he told you he couldn't</p> <p>19 find one, and then he found it --</p> <p>20 A. No, sir. He did not find it.</p> <p>21 I never said he found it. I said he did not</p> <p>22 find it.</p> <p>23 Q. Okay. That's fine.</p>

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<p style="text-align: right;">Page 189</p> <p>1 To your knowledge, was this 2 done on March 26th originally? 3 A. I have no idea. 4 Q. Okay. Do you have any idea 5 when he initially prepared it? 6 A. No, sir. 7 Q. All right. And was -- The 8 first page of Exhibit 5 is to Mrs. Dees, I 9 assume that's your wife? 10 A. Yes, sir. 11 Q. Was this faxed to some fax 12 numbers of hers or at her office somewhere? 13 A. Yes, sir. 14 Q. Did you ask Sergeant Barnes to 15 send it to your wife? 16 A. Yes, sir. 17 Q. And was it at her office? 18 A. Yes, sir. 19 Q. Where does she work? 20 A. Peachtree Bank in Maplesville, 21 Alabama. 22 Q. So to your knowledge, Sergeant 23 Barnes sent this to her bank?</p>	<p style="text-align: right;">Page 191</p> <p>1 A. I don't know. 2 Q. Okay. Do you know if Sergeant 3 Barnes ever called Hyundai's HR department 4 for any reason? 5 A. Not to my knowledge. 6 Q. Okay. Had you provided him 7 with Greg Kimball's name? 8 A. Yes, sir. 9 Q. Did you provide him with Greg 10 Kimball's address or fax number or anything 11 like that? 12 A. Address to the plant. 13 Q. Just the plant address? 14 A. Yes, sir. Attention Greg 15 Kimball. 16 Q. Okay. In paragraph thirteen 17 of your complaint you say: After the letter 18 from Sergeant Barnes was sent to Hyundai, 19 the incidences of harassment outlined above 20 escalated. 21 Let me ask you that: Is that 22 accurate? 23 A. Yes, sir.</p>
<p style="text-align: right;">Page 190</p> <p>1 A. Yes, sir. 2 Q. And did she bring it home to 3 you? 4 A. Yes, sir. 5 Q. And it looks like it was faxed 6 on March 26th; is that accurate? 7 A. Yes, sir. 8 Q. And do you recall whether that 9 was when you got it or not? 10 A. Yeah. She got it that day, 11 she brought it home that evening, yes, sir. 12 Q. All right. Had you talked to 13 Sergeant Barnes that day? 14 A. I don't know. I don't know. 15 Q. Okay. Do you remember talking 16 to Sergeant Barnes asking him to send you 17 some sort of memorandum for the Record or 18 something telling what he had done in the 19 past? 20 A. Yes, sir. 21 Q. Did he fax this to you on the 22 same day or did this take place at a later 23 time?</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. How did they escalate? 2 A. I mean, it went from every 3 other day I was being called on the carpet. 4 I mean -- 5 Q. Called on the carpet for what? 6 A. Anything he could make up, 7 they could make up, everything. 8 Q. What would they make up? 9 A. The daily reports, and I 10 believe that was in there somewhere, where I 11 didn't turn in my daily report where I 12 actually filled it out but I worked over, 13 and it was still in the book, I just didn't 14 drop it off in the box. And I was being 15 threatened on a write-up when there were 16 several other team members on both shifts 17 who hadn't turned in a daily report in over 18 a month. That was just one example. 19 Q. Well, during that period, were 20 -- were you ever suspended for any reason? 21 A. No, sir. They ignored their 22 whole firing process. I was never written 23 up, to my knowledge.</p>

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<p style="text-align: right;">Page 193</p> <p>1 Q. Okay.</p> <p>2 A. They went against their own</p> <p>3 program, their own handbook, their own</p> <p>4 system.</p> <p>5 Q. Okay. Just so I understand,</p> <p>6 how did they do that?</p> <p>7 A. Well, supposedly there's a</p> <p>8 system, a process, you have to go through to</p> <p>9 get fired. Several steps in between. I</p> <p>10 went from zero to fired.</p> <p>11 Q. So when you say they</p> <p>12 disregarded the steps, you're talking about</p> <p>13 your termination?</p> <p>14 A. Their own firing process.</p> <p>15 It's not my termination. That's their</p> <p>16 process that they came up with, that they</p> <p>17 said they would abide by that they threw out</p> <p>18 the window.</p> <p>19 Q. Okay. Also in paragraph</p> <p>20 thirteen you say that on or about February</p> <p>21 26, 2007, Prater got the stamping manager,</p> <p>22 Jim Brookshire to falsely accuse Dees of</p> <p>23 sleeping on the job.</p>	<p style="text-align: right;">Page 195</p> <p>1 Brookshire to make those allegations?</p> <p>2 A. Well, I mean -- I'm not sure</p> <p>3 how he -- what went on. I know I was</p> <p>4 standing up there in my area that I was</p> <p>5 supposed to be in, with one of my coworkers,</p> <p>6 who had left me standing out there in plain</p> <p>7 site on a wire mesh floor where everybody</p> <p>8 can see, not five minutes before I was</p> <p>9 accused of sleeping. And I read Will Ware's</p> <p>10 statements where Jim Brookshire said he</p> <p>11 never saw my eyes closed. And the next</p> <p>12 thing I know, I'm getting fired for sleeping</p> <p>13 on duty. If I sleep on duty, he's saying</p> <p>14 this ain't a military thing, he was always</p> <p>15 referring to military things, every time</p> <p>16 someone talked to me, they put it in a</p> <p>17 military perspective. If I didn't live my</p> <p>18 life in a military manner, why would they do</p> <p>19 that? If I sleep on duty on post, I die.</p> <p>20 That's not the most important thing. If I</p> <p>21 sleep on duty on post, my men die, that's</p> <p>22 the most important thing. I live my</p> <p>23 civilian life just like I do my military</p>
<p style="text-align: right;">Page 194</p> <p>1 A. February 26th was the day I</p> <p>2 was terminated. I believe, like you said,</p> <p>3 it was the 19th. I'm not sure, it was the</p> <p>4 week before that.</p> <p>5 Q. Okay. So you put -- Do you</p> <p>6 know why it says the 26th? Is it for any</p> <p>7 reason other than that's the day you were</p> <p>8 terminated?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Do you have any personal</p> <p>11 knowledge that Greg Prater tried to get Jim</p> <p>12 Brookshire to say that you were sleeping?</p> <p>13 A. I don't know. Prater wasn't</p> <p>14 even there that night. It was Jim</p> <p>15 Brookshire.</p> <p>16 Q. So you agree Prater wasn't</p> <p>17 even there that night?</p> <p>18 A. No, he wasn't. It was on a</p> <p>19 night shift.</p> <p>20 Q. Okay. So if Greg Prater</p> <p>21 wasn't at the plant the night that Jim</p> <p>22 Brookshire made the allegations, how is it</p> <p>23 that you say that Prater tried to convince</p>	<p style="text-align: right;">Page 196</p> <p>1 life. Just because for the same reason --</p> <p>2 Just like is fixing to happen next year, I</p> <p>3 am going back to Iraq. If I slough off in</p> <p>4 my civilian life, I slough off in my</p> <p>5 military life. I don't do that.</p> <p>6 Q. Okay. Let me ask you this:</p> <p>7 Do you know the night that Jim Brookshire</p> <p>8 allegedly made the allegations he saw you</p> <p>9 sleeping?</p> <p>10 A. Yes. I don't remember the</p> <p>11 exact date. I think it was around the 19th.</p> <p>12 But the exact incident, yes, sir, I remember</p> <p>13 it.</p> <p>14 Q. So you know the incident?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And you agree Greg Prater</p> <p>17 wasn't on duty that night?</p> <p>18 A. No, sir, he was not.</p> <p>19 Q. Wasn't at the plant?</p> <p>20 A. No, sir.</p> <p>21 Q. Do you even know whether he</p> <p>22 worked the next day?</p> <p>23 A. I don't know.</p>

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<p style="text-align: right;">Page 197</p> <p>1 Q. Okay. Do you know whether —</p> <p>2 Do you have any evidence to suggest that he</p> <p>3 and Jim Brookshire had talked before that</p> <p>4 night about accusing you of something?</p> <p>5 A. If I had it, you would have</p> <p>6 it.</p> <p>7 Q. Okay. So, but, again, I just</p> <p>8 want to make sure. Okay?</p> <p>9 A. Like I say, you're the one</p> <p>10 that's talked to them. You'll have to go</p> <p>11 ask them.</p> <p>12 Q. Let me ask you this: You're</p> <p>13 not aware of any evidence to suggest Greg</p> <p>14 Prater told Jim Brookshire to make up some</p> <p>15 allegations before that night, and Greg</p> <p>16 Prater wasn't there that night, and you</p> <p>17 don't know whether Greg Prater even worked</p> <p>18 the next day, what evidence do you have to</p> <p>19 suggest that Greg Prater told Jim Brookshire</p> <p>20 what to do, or when to do it, or how to do</p> <p>21 it?</p> <p>22 A. I don't have any evidence of</p> <p>23 Prater and Jim corroborating or whatever you</p>	<p style="text-align: right;">Page 199</p> <p>1 the evening in question?</p> <p>2 A. Yes, sir.</p> <p>3 Q. All right. How is it you know</p> <p>4 when Jim Brookshire made those allegations?</p> <p>5 A. I saw him and Kevin Hughes</p> <p>6 standing down on the floor pointing up at me</p> <p>7 and Shane.</p> <p>8 Q. Pointing up at you where?</p> <p>9 A. Up in my area of</p> <p>10 responsibility. They said that I was</p> <p>11 supposedly sleeping up in the SOPS. It's</p> <p>12 about -- It's what they call the third</p> <p>13 floor. And there's an open wire mesh floor</p> <p>14 right there. You can't hide. And Shane</p> <p>15 walked downstairs, and I let my guard down.</p> <p>16 I had a brain cramp. And it wasn't five</p> <p>17 minutes, here come Jim walking up the</p> <p>18 stairs, walking around the back, looked over</p> <p>19 at me about fifty foot away, walked down,</p> <p>20 looked out over the presses, came back,</p> <p>21 looked at me again. I watched him, I</p> <p>22 watched him walk all the way back down the</p> <p>23 stairs. When he did, I got up and walked</p>
<p style="text-align: right;">Page 198</p> <p>1 want to call it.</p> <p>2 Q. Okay. Well, you would agree</p> <p>3 that that's not consistent with what's</p> <p>4 contained in your complaint?</p> <p>5 A. Did Prater and Brookshire</p> <p>6 stick together on everything? Yes.</p> <p>7 Q. In other words, they're</p> <p>8 consistent?</p> <p>9 A. Yeah. I mean, if Prater said</p> <p>10 something, Brookshire backed him up;</p> <p>11 Brookshire said something, Prater backed him</p> <p>12 up.</p> <p>13 Q. Okay. But where you've</p> <p>14 indicated in your complaint that Prater got</p> <p>15 the production staffing manager, Jim</p> <p>16 Brookshire, to falsely accuse Dees of</p> <p>17 sleeping on the job, what evidence do you</p> <p>18 have that Prater did that?</p> <p>19 A. Like I said before, I don't</p> <p>20 have none. If I did, you'd have it.</p> <p>21 Q. Okay. Thank you.</p> <p>22 And am I correct that on the</p> <p>23 evening of -- Well, you indicated you know</p>	<p style="text-align: right;">Page 200</p> <p>1 downstairs.</p> <p>2 Q. Okay. Were you sitting down?</p> <p>3 A. Yes, sir, I was. I was trying</p> <p>4 to text message my daughter.</p> <p>5 Q. You were text messaging your</p> <p>6 daughter?</p> <p>7 A. I was trying to, yes, sir, I</p> <p>8 was.</p> <p>9 Q. So you had your phone in your</p> <p>10 hand?</p> <p>11 A. Yes, sir, I did.</p> <p>12 Q. Were you looking down into</p> <p>13 your lap at the phone? Or how did you have</p> <p>14 your phone?</p> <p>15 A. I had my phone right here</p> <p>16 (indicating). Like I said, I watched him</p> <p>17 walk up the stairs, and I watched him. We</p> <p>18 made eye contact, he kept walking. So I</p> <p>19 went back to text messaging. He come back,</p> <p>20 I looked up at him again, and I watched him</p> <p>21 walk all the way down. I closed my phone, I</p> <p>22 got up, and I went down.</p> <p>23 Q. Did you actually send someone</p>

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<p style="text-align: right;">Page 201</p> <p>1 a text message?</p> <p>2 A. I tried. No, I couldn't get</p> <p>3 out.</p> <p>4 Q. What do you mean you couldn't</p> <p>5 get out?</p> <p>6 A. Depending on the weather and</p> <p>7 where you was at, sometimes you could get a</p> <p>8 good signal in the plant and sometimes you</p> <p>9 couldn't.</p> <p>10 Q. Would there be any records to</p> <p>11 support whether or not you actually made a</p> <p>12 text message that evening?</p> <p>13 A. I've got my phone bill, but,</p> <p>14 no, I told you, I didn't get out.</p> <p>15 Q. Okay. So is it your testimony</p> <p>16 you had the phone in your hand, you were</p> <p>17 pressing buttons, but nothing was happening?</p> <p>18 A. Pretty much it.</p> <p>19 Q. Were you wearing a hard hat?</p> <p>20 A. No, sir. We wear ball caps</p> <p>21 with a little plastic insert. And it was</p> <p>22 sitting on the spool beside me, spool of</p> <p>23 cable.</p>	<p style="text-align: right;">Page 203</p> <p>1 A. No, sir. They wear a ball</p> <p>2 cap, what they call a bump cap, little</p> <p>3 plastic insert.</p> <p>4 Q. Okay. And during the period</p> <p>5 in which you saw Jim Brookshire up on that</p> <p>6 third floor, I mean, you saw Jim Brookshire</p> <p>7 on the third floor?</p> <p>8 A. Yes, sir. I watched him walk</p> <p>9 up, around, and back down.</p> <p>10 Q. Was this after Shane Archer</p> <p>11 had left?</p> <p>12 A. About five minutes after Shane</p> <p>13 left.</p> <p>14 Q. Five minutes. Do you recall</p> <p>15 it being five minutes? That was a long time</p> <p>16 ago.</p> <p>17 A. It wasn't long. Like I said,</p> <p>18 me and Shane had just been standing there</p> <p>19 wondering why they were standing down on the</p> <p>20 floor pointing up at us talking.</p> <p>21 Q. Okay. Do you remember what</p> <p>22 time it was you saw them down on the floor</p> <p>23 pointing up at you?</p>
<p style="text-align: right;">Page 202</p> <p>1 Q. So you were not wearing a ball</p> <p>2 cap?</p> <p>3 A. No, sir.</p> <p>4 Q. Were you wearing any sort of</p> <p>5 eye protection or anything like that?</p> <p>6 A. They were in my hard hat.</p> <p>7 Q. Hard hat or ball cap?</p> <p>8 A. Ball cap.</p> <p>9 Q. Did you have a hard hat with</p> <p>10 you?</p> <p>11 A. No. They don't wear hard</p> <p>12 hats.</p> <p>13 Q. They don't wear them anywhere?</p> <p>14 A. Not to my knowledge, no.</p> <p>15 Q. In the whole plant?</p> <p>16 A. Some people may, but I was</p> <p>17 stuck in my section, I don't know.</p> <p>18 Q. And your section was</p> <p>19 somewhere?</p> <p>20 A. Stamping maintenance.</p> <p>21 Q. So to your knowledge, in</p> <p>22 stamping maintenance they don't wear hard</p> <p>23 hats?</p>	<p style="text-align: right;">Page 204</p> <p>1 A. It was before chow.</p> <p>2 Everything happened before chow that night.</p> <p>3 Q. What time is chow?</p> <p>4 A. I believe it was -- I think it</p> <p>5 was eleven thirty that night, eleven thirty</p> <p>6 or eleven forty-five.</p> <p>7 Q. What time did you get to work?</p> <p>8 A. I don't know. You would have</p> <p>9 to -- Y'all got that.</p> <p>10 Q. What time did you usually</p> <p>11 start?</p> <p>12 A. It depended whether I was</p> <p>13 coming in early that night or late that</p> <p>14 week.</p> <p>15 Q. What's the latest you would</p> <p>16 have gotten there?</p> <p>17 A. I believe it was six or seven.</p> <p>18 Q. P.m.?</p> <p>19 A. I think.</p> <p>20 Q. Okay. And starting at six or</p> <p>21 seven, whenever you got there --</p> <p>22 A. Six to four forty-five and</p> <p>23 seven to five forty-five.</p>

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<p style="text-align: right;">Page 205</p> <p>1 Q. All right.</p> <p>2 A. But we always had to be there</p> <p>3 early.</p> <p>4 Q. So you would have been there</p> <p>5 sometime slightly before six or seven?</p> <p>6 A. Yes, sir.</p> <p>7 Q. All right. So you get there a</p> <p>8 little bit before six or seven. Do you go</p> <p>9 to the -- is there an office for stamping</p> <p>10 maintenance?</p> <p>11 A. That's where our lockers are</p> <p>12 at.</p> <p>13 Q. All right. So would you</p> <p>14 usually go to your locker first?</p> <p>15 A. Yes, sir.</p> <p>16 Q. All right. Do you remember</p> <p>17 doing that on the night in question?</p> <p>18 A. I did it every night. That's</p> <p>19 where my tools was locked up.</p> <p>20 Q. So you would go get your tools</p> <p>21 to start the day?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And on the evening in</p>	<p style="text-align: right;">Page 207</p> <p>1 A. Second and third floor.</p> <p>2 Q. Second and third floor.</p> <p>3 A. And if they was running them,</p> <p>4 it could be on the first floor too.</p> <p>5 Q. All right. Did you go to the</p> <p>6 second floor that night?</p> <p>7 A. Right off the bat?</p> <p>8 Q. Yeah.</p> <p>9 A. Probably not. I probably went</p> <p>10 and got the brief from the off-going shift.</p> <p>11 Q. What is that? Is that</p> <p>12 something telling you what to do?</p> <p>13 A. Like I said earlier this</p> <p>14 morning, we go get our tools, go talk to</p> <p>15 people on the off-going shift, find out if</p> <p>16 there's any breakdowns, anything, any major</p> <p>17 events we needed to know about or look out</p> <p>18 for.</p> <p>19 Q. How long does that usually</p> <p>20 take?</p> <p>21 A. If nothing happened, two</p> <p>22 seconds. Give me your radio. Bye, y'all</p> <p>23 take it easy.</p>
<p style="text-align: right;">Page 206</p> <p>1 question, did you go immediately from</p> <p>2 getting your tools to a meeting with Greg</p> <p>3 Prater or Kevin Hughes or anybody like that?</p> <p>4 What did you do?</p> <p>5 A. We didn't have meetings.</p> <p>6 Q. Okay.</p> <p>7 A. We'd get our tools and --</p> <p>8 Q. How did you know what to do?</p> <p>9 A. I mean, it's just standard.</p> <p>10 Everybody -- We'd come in, we'd get our</p> <p>11 tools, we'd go to work. I mean --</p> <p>12 Q. But how did you --</p> <p>13 A. -- that was the norm.</p> <p>14 Q. How did you know what to work</p> <p>15 on?</p> <p>16 A. We didn't work on nothing. If</p> <p>17 nothing wasn't broke down, we would go to</p> <p>18 our area of responsibility.</p> <p>19 Q. So you would just go to an</p> <p>20 area that you were responsible for?</p> <p>21 A. An area I was assigned.</p> <p>22 Q. And that was the SOP section</p> <p>23 up on third floor?</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. Would you share a radio with</p> <p>2 the off-going shift?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Do you know who your</p> <p>5 counterpart is on the off-going shift or who</p> <p>6 was on the evening in question?</p> <p>7 A. They didn't really have</p> <p>8 assigned areas like we did, I don't think.</p> <p>9 I mean, it would be different people.</p> <p>10 Sometimes it would be Duane Tatum, or</p> <p>11 sometimes it would be Lance Honeycutt, or --</p> <p>12 I can't remember the other guy's name.</p> <p>13 Q. All right. Well, that's okay.</p> <p>14 Once y'all sort of made the</p> <p>15 shift change and talked with the off-going</p> <p>16 guys, you would go to your work area;</p> <p>17 correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And on the evening in</p> <p>20 question, you think that would have been</p> <p>21 immediately up to the third level?</p> <p>22 A. Maybe not. Not if they was</p> <p>23 running. If they was running, we would be</p>

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<p style="text-align: right;">Page 209</p> <p>1 over at the press and see how they were 2 running and make sure the trolleys were 3 switching out right. 4 Q. Do you remember what you did? 5 A. No. 6 Q. You can't remember? 7 A. I remember the weather was bad 8 that night. There had been a couple of 9 nights that week the weather was bad, so I 10 don't -- several nights we had to go to the 11 storm shelters, like the pit and bathrooms, 12 because of the weather. So, no. 13 Q. Do you remember having to go 14 to the storm shelter on the evening we're 15 talking about? 16 A. I don't know if it was that 17 evening or a couple of evenings before. 18 Q. Okay. Do you remember when 19 you first went up to the third level on the 20 evening we're talking about? 21 A. Me and Shane went up there -- 22 at the time the incident occurred, me and 23 Shane had gone up there because we had to</p>	<p style="text-align: right;">Page 211</p> <p>1 got the system back online. 2 Q. How long did that take? 3 A. Not long. I don't know to be 4 honest. 5 Q. Okay. And so when you got the 6 trolleys back online, is that when Shane 7 Archer went downstairs? 8 A. After we talked about Jim and 9 Kevin pointing up at us talking. 10 Q. Okay. So you and Shane Archer 11 had a conversation where y'all talked about 12 Jim Brookshire and Kevin Hughes looking up 13 at you? 14 A. Yes, sir. 15 Q. And pointing? 16 A. Yes, sir. It was basically 17 what are they doing? Why are they pointing 18 up here? I don't know. 19 Q. And was that before midnight? 20 A. Yes, sir. 21 Q. And how much -- How long after 22 that was it that Jim Brookshire came 23 upstairs?</p>
<p style="text-align: right;">Page 210</p> <p>1 pull trolleys. 2 Q. Pull trolleys? 3 A. Yes, sir. Because we had a 4 problem. 5 Q. Just so -- I think I know what 6 you're talking about, but when you say pull 7 trolleys, is that when part of that conveyor 8 system gets off line or something, and you'd 9 have to go straighten it out? 10 A. If you know what I'm talking 11 about, yeah, the things that ride the rails, 12 that's the trolleys. 13 Q. Okay. Does that just mean one 14 of those got offline and you had to correct 15 it? 16 A. Yes, sir. 17 Q. Okay. And when you went up 18 there with Shane Archer, was that when you 19 looked down and saw Kevin Hughes and Jim 20 Brookshire looking up at you or was that 21 later in the evening? 22 A. No. It was at that instant. 23 We had just finished pulling a trolley, just</p>	<p style="text-align: right;">Page 212</p> <p>1 A. Like I said earlier, no more 2 than five minutes. 3 Q. All right. And was it unusual 4 to see him walking around up there? 5 A. Yes, sir. It was very unusual 6 to see him walking around up there unless 7 something was bad broke down. 8 Q. Okay. Do you recall seeing 9 him up there more than that one time on that 10 evening? 11 A. No, sir. 12 Q. No? 13 A. No, sir. 14 Q. Do you recall when Jim 15 Brookshire walked up there, was there 16 anybody else on the third level? 17 A. No, sir. 18 Q. Just you and him? 19 A. Yes, sir. 20 Q. Have you talked to anybody 21 else who talked to Jim Brookshire about what 22 he had gone up there for? 23 A. No, I don't guess I have.</p>

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<p style="text-align: right;">Page 213</p> <p>1 Q. Okay. And did you talk to Jim Brookshire?</p> <p>2 A. That night, no. And then</p> <p>3 later on, huh-uh.</p> <p>4 Q. When he walked up there and you saw him, did you say anything to him?</p> <p>5 A. No, sir. Like I said he</p> <p>6 was -- I was there at an MCC panel, and he</p> <p>7 was up, I don't know, forty-five, fifty foot</p> <p>8 away over there on the handrail.</p> <p>9 Q. Okay. Did you wave at him or motion to him at all?</p> <p>10 A. No, sir. I just looked at</p> <p>11 him.</p> <p>12 Q. You looked at him?</p> <p>13 A. Yes, sir. He looked at me and</p> <p>14 walked down to the presses, looked out over</p> <p>15 the presses, then walked back, looked at me</p> <p>16 again, and walked back down.</p> <p>17 Q. What was the closest he got to you?</p> <p>18 A. Like I say, forty-five, maybe</p> <p>19 fifty feet.</p>	<p style="text-align: right;">Page 215</p> <p>1 -- Yes, it is a computer, but it doesn't</p> <p>2 have a screen and the keys -- keyboards are</p> <p>3 like what you're thinking. You have to get</p> <p>4 online with it.</p> <p>5 Q. How big is it?</p> <p>6 A. It's probably about ten-foot</p> <p>7 long, two-foot deep, six-foot high.</p> <p>8 Q. Okay. Does it have doors that enclose it or some sort of cover or anything?</p> <p>9 A. Yes, sir.</p> <p>10 Q. What's it got?</p> <p>11 A. It's got doors.</p> <p>12 Q. Okay. How big are the doors?</p> <p>13 A. About like that door there</p> <p>14 (indicating).</p> <p>15 Q. Okay. Just for the sake of the Record, that's not going to translate well on paper. Are there two doors to the whole thing?</p> <p>16 A. No. There was four -- four</p> <p>17 doors.</p> <p>18 Q. So they would have each been</p>
<p style="text-align: right;">Page 214</p> <p>1 Q. Now, what was the thing you said you were near?</p> <p>2 A. Motor control panel, MCC</p> <p>3 panel.</p> <p>4 Q. MCC panel. Now, is that -- What is that?</p> <p>5 A. It houses the PLC, computer</p> <p>6 that runs the SOPS system.</p> <p>7 Q. Okay. That's helpful. Thank you. What is the PLC?</p> <p>8 A. Programmable logic computer.</p> <p>9 Q. Just for the sake of the record, what does SOP mean?</p> <p>10 A. SOP is the trolley system,</p> <p>11 side outer panel system.</p> <p>12 Q. Okay. Again, what was the thing that you were standing near?</p> <p>13 A. MCC.</p> <p>14 Q. Is the MCC, is it like a computer, it has got computer readouts on it, buttons and stuff?</p> <p>15 A. It's not a computer like</p> <p>16 you're thinking of. It's got cards and it</p>	<p style="text-align: right;">Page 216</p> <p>1 about a fourth of that ten-foot length?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay.</p> <p>4 A. Plus you had your stabs in</p> <p>5 between.</p> <p>6 Q. What is a stab?</p> <p>7 A. Just your door frame.</p> <p>8 Q. Okay. Now, at the time Jim Brookshire came up there, did you have your back to the MCC?</p> <p>9 A. Yes, sir, I did.</p> <p>10 Q. Okay. Any reason you had your back to the MCC?</p> <p>11 A. So I could watch the trolleys.</p> <p>12 Q. Okay. Were you not up there to watch the MCC?</p> <p>13 A. No, sir.</p> <p>14 Q. Okay. Why would you be there near the MCC as opposed to some other area to watch the trolleys?</p> <p>15 A. Because if you try to sit out</p> <p>16 on open mesh, you're going through the</p> <p>17 floor.</p>

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<p style="text-align: right;">Page 217</p> <p>1 Q. Was it not open mesh there 2 near the MCC? 3 A. About a two-foot section, no, 4 sir. 5 Q. A two-foot section was not 6 open mesh? 7 A. No, sir. But you can clearly 8 see up there everywhere. And that's where 9 me and Shane was standing when Jim and Kevin 10 was standing up there pointing at us talking 11 about us. 12 Q. Okay. So from where you were 13 sitting at the time Jim Brookshire came up, 14 is it your testimony that you could see from 15 where you were sitting all the way down 16 through the second floor, and then down to 17 the first floor? 18 A. Yes, sir. 19 Q. And the first floor was the 20 main production level? 21 A. Yes, sir. 22 Q. Okay. Had you ever sat up 23 there before?</p>	<p style="text-align: right;">Page 219</p> <p>1 on this one, go to the next one, but then it 2 may stop again on the next one. Just 3 because you get it going for two seconds, 4 don't mean it's going to be going -- it's 5 going to take off and run. 6 Q. Okay. So you were going to 7 stay up there and make sure it kept running? 8 A. Yes, sir. 9 Q. Okay. What were you planning 10 to do? I mean, how long would you stay 11 there? 12 A. As long as nothing happened -- 13 Well, that was my area of responsibility. I 14 could have stayed there all night, and I 15 would have been right in doing so. I was 16 told to stay in my area of responsibility 17 just like everyone else. Like I said, Mark 18 Hanks, he had to stay on press one, Darrel 19 Gray, he had to stay on press two, and Weihe 20 and Barefoot. That was my AO that I was 21 responsible for. 22 Q. AO meaning what? 23 A. Area of operation, area of</p>
<p style="text-align: right;">Page 218</p> <p>1 A. Everybody had. 2 Q. Okay. And everybody being, 3 everybody in stamping maintenance or 4 everybody period? 5 A. Everybody in stamping 6 maintenance. Because if it goes down, you 7 may be up there five minutes, you may be up 8 there five hours. 9 Q. Okay. Let me ask you this: 10 When Shane Archer -- You and Shane Archer 11 were up there working together that night? 12 A. Yes, sir. Shane came up to 13 help me out. 14 Q. When you and Shane had got 15 done and he walked downstairs, why did you 16 stay upstairs as opposed to going with 17 Shane? 18 A. Wait to see if that trolley 19 stopped again or kept going. They had track 20 switches, you've seen them. Track switches 21 switch, they had a track that had gone out 22 on a track switch, which if you've seen the 23 system, which I'm sure you have, it may stop</p>	<p style="text-align: right;">Page 220</p> <p>1 responsibility. 2 Q. Okay. Did you ever sleep up 3 on the third level? 4 A. I don't sleep. 5 Q. Ever? 6 A. Ever. 7 Q. On the job? 8 A. I don't sleep on the job, no. 9 Q. Okay. 10 A. I told you if I sleep -- I'm a 11 career soldier. I've been doing this since 12 I was seventeen. 13 Q. Doing what? Stamping 14 maintenance? 15 A. No. I've been a soldier since 16 I was seventeen, and I don't sleep. You've 17 got a young Joe out there, yeah, they may 18 fall asleep every now and then. First big 19 exercise they have and they wake up with a 20 black ink mark cross their throat and they 21 know that they've been visited, and don't 22 know when or where, you don't sleep no more. 23 That's real life. When you go to the combat</p>

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<p style="text-align: right;">Page 221</p> <p>1 zone, you know what happens. You don't 2 sleep. You sleep, people die. 3 Q. Well, in terms of your work at 4 Hyundai, I'm assuming your testimony is 5 you've never slept? 6 A. No, sir. 7 Q. Before that night, on that 8 night, or since that night? 9 A. No, sir. You don't sleep at 10 work. 11 Q. Okay. What was it -- 12 A. If you sleep at work -- 13 Q. Was it unusual for people 14 working up on that third level to sleep? 15 A. I never saw nobody up there 16 other than maintenance production go up 17 there and count the panels. 18 Q. Okay. Did you ever see 19 anybody from maintenance sleep up there? 20 A. No, sir. 21 Q. Did you ever see any 22 indication that somebody from maintenance 23 had slept up there?</p>	<p style="text-align: right;">Page 223</p> <p>1 Q. And is it your testimony that 2 nobody from your shift ever indicated that 3 they or anybody else on your shift slept in 4 that corner? 5 A. I never talked to nobody on my 6 shift about sleeping in that corner, no, 7 sir. 8 Q. Okay. Did you ever talk to 9 anybody on your shift about sleeping 10 anywhere up on the third level? 11 A. No, sir. Drake Barefoot would 12 take his lunch break and go in the office 13 and sleep. Other than that, no, sir. 14 Q. In the office? 15 A. Yes, sir. During his lunch 16 break. 17 Q. And is it your testimony that 18 while you were there, that there was nothing 19 other than a chair in the back corner? 20 A. I don't remember seeing 21 nothing other than a chair there. 22 Q. Okay. Do you -- Do you have 23 any personal knowledge, based on your</p>
<p style="text-align: right;">Page 222</p> <p>1 A. Talking about a chair in the 2 back corner? Yes, sir, there was a chair in 3 the back corner. 4 Q. Was there a chair in the 5 corner? 6 A. In that back corner over 7 there, yes, sir, there was. 8 Q. What kind of chair was it? 9 A. Same kind of chair I was 10 sitting in, a metal chair. 11 Q. Was that all that was there? 12 A. I believe so. 13 Q. Nothing else in that back 14 corner? 15 A. No. 16 Q. Do you think somebody was back 17 there sleeping in that chair? 18 A. I don't know. Wasn't nobody 19 on my shift was. 20 Q. All right. Did you hear 21 anybody talking about people from other 22 shifts sleeping in that corner? 23 A. No, sir.</p>	<p style="text-align: right;">Page 224</p> <p>1 conversations with Wendy Warner at the time 2 you were terminated or anybody at that time 3 or before then or after then, to know what 4 went on at the time the decision to 5 terminate was made? 6 A. Say again. 7 Q. Let me see if I can come up 8 with an easier way of asking it. 9 Would it be fair to state you 10 don't know who was involved in the decision 11 to terminate you? 12 A. I have no idea who was 13 involved. 14 Q. Okay. And do you know 15 anything else about the decision to 16 terminate you? 17 A. No. Just that statement I 18 read where Prater said his recommendation 19 was termination. And that he told Hanks 20 that he did the investigation. 21 Q. All right. And would it be 22 fair to state that you don't know whether 23 Greg Prater sat in on the discussions or</p>

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<p style="text-align: right;">Page 225</p> <p>1 decision to terminate you?</p> <p>2 A. I didn't know they had had a</p> <p>3 meeting on it.</p> <p>4 Q. Okay. Do you have any reason</p> <p>5 to think that Greg Prater had any other</p> <p>6 involvement on it?</p> <p>7 A. Like I said, I didn't even</p> <p>8 know they had a meeting.</p> <p>9 Q. Okay. Do you have any</p> <p>10 evidence to suggest that your past military</p> <p>11 involvement, either in Korea, Iraq, National</p> <p>12 Guard, was a motivating factor in the</p> <p>13 decision to terminate you?</p> <p>14 A. That's the way it seemed.</p> <p>15 Q. And it seemed that way why?</p> <p>16 A. Because every bit of that</p> <p>17 stemmed from my prior duty commitment.</p> <p>18 Everything stemmed around my drill weekends.</p> <p>19 Q. What stemmed?</p> <p>20 A. All the problems, all the</p> <p>21 harassments.</p> <p>22 Q. I'm talking about the actual</p> <p>23 decision to terminate you.</p>	<p style="text-align: right;">Page 227</p> <p>1 Q. How was it that was part of</p> <p>2 your termination?</p> <p>3 A. Like I said before, that's</p> <p>4 where all my problems stem from. That's</p> <p>5 where they all started with the drill</p> <p>6 weekend.</p> <p>7 Q. Okay. So are you suggesting</p> <p>8 that the fact that you had problems with</p> <p>9 your drill weekends leads you to think that</p> <p>10 that's why you were terminated?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And do you have any firsthand</p> <p>13 knowledge that that is in fact the case?</p> <p>14 A. Just all the incidents leading</p> <p>15 up to it.</p> <p>16 Q. Okay. And do you know if</p> <p>17 those incidents were discussed or considered</p> <p>18 in the termination process?</p> <p>19 A. No, sir, I do not know that.</p> <p>20 THE WITNESS: It's break time.</p> <p>21 MR. JOHNSON: Okay. If you</p> <p>22 need a break, take one.</p> <p>23 (Recess taken.)</p>
<p style="text-align: right;">Page 226</p> <p>1 A. Oh, I have no idea. I don't</p> <p>2 know. Like I said, I didn't even know they</p> <p>3 had a meeting on it.</p> <p>4 Q. Okay. So it would be fair to</p> <p>5 state that you're not aware, based on your</p> <p>6 own personal knowledge, of any evidence to</p> <p>7 suggest that your military service was a</p> <p>8 motivating factor in the decision to</p> <p>9 terminate you?</p> <p>10 A. Rephrase.</p> <p>11 Q. Would it be fair to say that</p> <p>12 you don't have any personal knowledge that</p> <p>13 your military history was a motivating</p> <p>14 factor or part of the reason why they made</p> <p>15 the decision to terminate you?</p> <p>16 A. I -- As far as my personal</p> <p>17 knowledge, like I said, seems like my</p> <p>18 military career was the whole reason for my</p> <p>19 being fired.</p> <p>20 Q. Being fired or for being</p> <p>21 harassed?</p> <p>22 A. Both. It started with the</p> <p>23 harassment and ended in the termination.</p>	<p style="text-align: right;">Page 228</p> <p>1 Q. Okay, Mr. Dees, we're back on</p> <p>2 the Record again. I want to ask you a</p> <p>3 couple more questions about some of the --</p> <p>4 this alleged sleeping incident.</p> <p>5 Jim Brookshire is somebody we</p> <p>6 talked about. Did you know Jim Brookshire</p> <p>7 well?</p> <p>8 A. He was -- Yeah. Working with</p> <p>9 him every day near about.</p> <p>10 Q. Okay. Did you ever have any</p> <p>11 problems with him?</p> <p>12 A. No. Not like with everyone</p> <p>13 else, no.</p> <p>14 Q. Okay. Did he ever demand</p> <p>15 orders from you, or anything like that?</p> <p>16 A. No. Because he wasn't in my</p> <p>17 immediate chain of command.</p> <p>18 Q. Okay. Did he ever say</p> <p>19 anything to you about your military career</p> <p>20 or your Guard duty or anything like that?</p> <p>21 A. No. The only thing he cared</p> <p>22 about was whether them presses was running.</p> <p>23 Q. Was what?</p>

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<p style="text-align: right;">Page 229</p> <p>1 A. Whether the presses was 2 running.</p> <p>3 Q. Okay. Do you have any reason 4 to think that Jim Brookshire has any bad 5 feelings or bad will towards you or anybody 6 else in the military for any reason?</p> <p>7 A. Towards me? Yeah. You got, 8 like I say, him and Prater, they were -- 9 they rubbed each other's back. You got 10 Prater come back down here a week ago, 11 talked to Bill Seivers telling him that 12 Applegate had told him to get rid of me. 13 You got --</p> <p>14 Q. Now, wait a minute. Let's --</p> <p>15 A. After I got fired, I called 16 Mr. Moon, he said he would look into it. He 17 says Prater was wrong in doing what he's 18 doing, but I can't do anything about it. 19 Were they rubbing each other's 20 back? Yeah. I mean, everything -- 21 Everything started when Prater said I had to 22 have orders.</p> <p>23 Q. Okay.</p>	<p style="text-align: right;">Page 231</p> <p>1 A. Yeah. It wasn't a production 2 issue.</p> <p>3 Q. All right. In other words, it 4 was a maintenance issue and Brookshire 5 shouldn't have been there?</p> <p>6 A. Yeah.</p> <p>7 Q. All right. During any of 8 those meetings did he ever suggest to you 9 that he came because he didn't like you, 10 didn't like the work you did, didn't like 11 the fact that you were in the service, or 12 anything like that?</p> <p>13 A. He's a politician, he's not 14 going to come out and say -- He's going to 15 try to make himself look good.</p> <p>16 Q. When you say he's a 17 politician, do you mean that literally or 18 figuratively?</p> <p>19 A. Figuratively.</p> <p>20 Q. Okay. I'm assuming he's never 21 run for -- Had he run for office or anything 22 like that?</p> <p>23 A. Not that I know of. You</p>
<p style="text-align: right;">Page 230</p> <p>1 A. And that come because -- I 2 don't know why it come about.</p> <p>3 Q. Well, I -- I got a pretty good 4 understanding of your relationship with Greg 5 Prater. But I'm interested now in Jim 6 Brookshire. I want to make sure I know all 7 about that.</p> <p>8 Is what you're telling me that 9 the only issue you've got with Brookshire 10 was his closeness with Greg Prater?</p> <p>11 A. Well, every time I -- Not 12 every time. Several times I got called into 13 the office, Jim was there, yes.</p> <p>14 Q. When you got called into the 15 office for what?</p> <p>16 A. Anything. Like the daily 17 reports, the pit, the lift. Anything.</p> <p>18 Q. All right. Would that all be 19 stuff in Brookshire's area?</p> <p>20 A. Yeah. He was over that whole 21 area.</p> <p>22 Q. Would there be any reason he 23 shouldn't be there?</p>	<p style="text-align: right;">Page 232</p> <p>1 probably know him better than I do. I don't 2 know.</p> <p>3 Q. Are you just commenting on his 4 personality?</p> <p>5 A. Commenting on his personality.</p> <p>6 Q. Okay. Can you think of 7 anything else -- Other than showing up when 8 you got called into the office, can you 9 think of anything else Jim Brookshire did or 10 said that you think suggests any sort of 11 feelings against you?</p> <p>12 A. I mean, there had to be, why 13 else would he accuse me of sleeping?</p> <p>14 Q. What are they? Are you 15 guessing or you know of some?</p> <p>16 A. I don't know. You'll have to 17 ask him.</p> <p>18 Q. All right.</p> <p>19 MR. SPORT: And we're trying 20 to right now.</p> <p>21 Q. Okay. But from your personal 22 standpoint, do you know of anything?</p> <p>23 A. Like I said, everything</p>

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<p style="text-align: right;">Page 233</p> <p>1 started with my military problem -- my 2 military commitment. And that's where it 3 stayed throughout my tenure there. 4 Q. Okay. 5 A. So you have to ask him. 6 Q. To your knowledge, has Hyundai 7 ever been nominated for any awards related 8 to their employment of military personnel? 9 A. According to -- According to 10 them they have. And -- 11 Q. Do you think it's not true? 12 A. -- ESGR. 13 Well, it may be, I don't know. 14 Q. Okay. Are you saying it's not 15 true? 16 A. The ESGR rep said they had 17 been put in for one. And they said after I 18 got fired, about two weeks after I got 19 fired, I think, somebody said they put in 20 for one. I'm not sure. The ESGR rep, I 21 don't know, you'll have to call him. 22 Q. Who are you talking about? 23 A. That Dan, the one that I told</p>	<p style="text-align: right;">Page 235</p> <p>1 a week prior. 2 Q. What did he say? 3 A. He said that he didn't even 4 know that I was even being considered for 5 termination; that he didn't know nothing 6 about it; and that he would look into it. 7 Q. Okay. Did he say anything 8 else on the night of that call? 9 A. He apologized for my being 10 fired and he hated that happened because I 11 was a good worker. 12 Q. Okay. Did you say anything 13 else to him that night? 14 A. I don't remember. By the time 15 I got home, I was pretty perturbed. 16 Q. I mean, did you call him from 17 home? 18 A. Yes, sir. 19 Q. Did your wife talk to him that 20 night? 21 A. Yes. She explained everything 22 to him in Korean. 23 Q. Do you speak Korean?</p>
<p style="text-align: right;">Page 234</p> <p>1 you I had e-mailed, that ESGR 2 representative. You'll have to ask him. 3 Q. Okay. All right. We'll have 4 to come back to that question because I lost 5 that e-mail. 6 Is there anybody else that you 7 and I haven't talked about that either knows 8 -- that works at Hyundai, that either knows 9 anything about problems you had with Prater 10 or HR or anybody related to your service, 11 anybody else? 12 A. I called Mr. Moon the night I 13 got fired. 14 Q. Yeah. Let's talk about 15 Mr. Moon. Did you talk to Mr. Moon or did 16 your wife talk to Mr. Moon? 17 A. I talked to Mr. Moon first and 18 then my wife talked to him. 19 Q. All right. What did you tell 20 Mr. Moon? 21 A. I told him that I had been 22 fired, and that I was supposedly fired for 23 sleeping in the SOPS, up on the third floor,</p>	<p style="text-align: right;">Page 236</p> <p>1 A. Some. Between my Korean and 2 his English, we was able to communicate 3 pretty good. 4 Q. Did you speak to him some in 5 Korean? 6 A. I may have. Like I said, I 7 was pretty hot. 8 Q. But, again, am I right that 9 you told me everything that you told him or 10 that he said to you on that telephone call? 11 A. He said he would look into it 12 and get back with me. 13 Q. All right. Based on either 14 what you overheard in Korean -- Was the 15 conversation your wife had with him in 16 Korean? 17 A. Yes, sir. 18 Q. Okay. From what you could 19 hear and understand in Korean, or from what 20 she told you later, what is your 21 understanding as to what she said? 22 A. I wasn't paying attention to 23 the conversation she had with him. But</p>

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<p style="text-align: right;">Page 237</p> <p>1 basically the same thing, that he told her 2 he hated to see me fired because I was a 3 good employee and that he would look into it 4 and that he would get back with me. 5 Q. Did he say anything else to 6 your wife that evening? 7 A. I don't know. 8 Q. Okay. Do you know if your 9 wife had any later conversations with him? 10 A. The next night he called back. 11 Q. Okay. And did he speak to you 12 that night? 13 A. A little bit. He mostly 14 talked to my wife. 15 Q. Okay. Were you able to 16 overhear the conversation? 17 A. Yes, sir. I talked to her 18 afterward. 19 Q. All right. What did they talk 20 about that night? 21 A. He stated that Prater was 22 lying, that Prater had been wrong. 23 Q. That Prater was lying?</p>	<p style="text-align: right;">Page 239</p> <p>1 Q. Okay. Did he indicate who he 2 had talked to since the last time y'all had 3 a telephone call? 4 A. I think he talked to -- I 5 think he said it was J.H. Kim or president 6 Ahn. It was J.H. Kim or Ahn, one, I can't 7 remember. 8 Q. All right. Do you know why 9 Mr. Moon said that Greg Prater had lied? 10 A. You'll have to ask Mr. Moon 11 that. 12 Q. Okay. Do you -- 13 A. Mr. Moon said that Prater was 14 a bad man. 15 Q. Okay. Did he say specifically 16 what he understood Greg Prater to have lied 17 about? 18 A. Yeah. Said that Greg Prater 19 lied about my sleeping at work. 20 Q. Okay. Did you get the 21 impression that Mr. Moon thought that Greg 22 Prater had been there that night? 23 A. No, sir, I did not.</p>
<p style="text-align: right;">Page 238</p> <p>1 A. Yes, sir. 2 Q. Lying about what? 3 A. My supposedly sleeping at 4 work. 5 Q. Why did he say Prater was 6 wrong? 7 A. And that he was -- 8 MR. KILBORN: Don't interrupt 9 him. 10 A. I don't know. You'll have to 11 ask him. That Prater was wrong in firing me 12 and that there was nothing he could do about 13 it now, he was told to stay away from it. 14 Q. Did he say who said to stay 15 away? 16 A. No. You'll have to -- I think 17 he made the comment to Mark Hanks. I'm not 18 sure. 19 Q. Do you know what Mr. Moon's -- 20 what his position is at the plant? 21 A. He was the Korean counterpart 22 to Prater; he was from HMC, he was our 23 Korean boss.</p>	<p style="text-align: right;">Page 240</p> <p>1 Q. Okay. Did Mr. Moon say that 2 Jim Brookshire had lied? 3 A. I didn't ask him about Jim 4 Brookshire. 5 Q. You never talked about Jim 6 Brookshire? 7 A. No, sir. 8 Q. Did you know that Jim 9 Brookshire was the one that indicated he had 10 seen you sleeping? 11 A. Yes, I did. I knew from the 12 very first meeting. 13 Q. Okay. You never told Mr. Moon 14 about that? 15 A. No, I did not. 16 Q. You never told Mr. Moon to 17 talk to Mr. Brookshire? 18 A. No. I'm sure he probably did, 19 though. You've interviewed my friends, 20 you'd have to ask them what -- they talked 21 to them. 22 Q. When you say you're sure 23 you're sure he did, do you know that or are</p>

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<p style="text-align: right;">Page 241</p> <p>1 you just wanting that to be the case?</p> <p>2 A. Say again.</p> <p>3 Q. When you say you're sure that</p> <p>4 Mr. Moon talked to Jim Brookshire, why? Why</p> <p>5 do you say that?</p> <p>6 A. Because of Mr. Moon's attitude</p> <p>7 toward Prater and production --</p> <p>8 stamping/production in general.</p> <p>9 Q. Okay.</p> <p>10 A. Stamping management.</p> <p>11 Q. Okay. Did he ever say</p> <p>12 anything about Jim Brookshire?</p> <p>13 A. On the phone? No.</p> <p>14 Q. Did he say anything about Jim</p> <p>15 Brookshire in person?</p> <p>16 A. No. We never talked about</p> <p>17 Jim.</p> <p>18 Q. Okay.</p> <p>19 A. Usually all we talked about</p> <p>20 was production -- I mean work-related</p> <p>21 problems. But me and Mr. Moon was good</p> <p>22 friends. We talked. We talked a lot.</p> <p>23 Q. Did you and Mr. Moon talk</p>	<p style="text-align: right;">Page 243</p> <p>1 English.</p> <p>2 Q. That's debatable. I'm</p> <p>3 assuming y'all talk in English at the house?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And she works in an</p> <p>6 English-speaking environment?</p> <p>7 A. Yes, sir. My daughters don't</p> <p>8 speak Korean, so she speaks English pretty</p> <p>9 well.</p> <p>10 Q. Okay. Did Mr. Moon indicate</p> <p>11 -- or did you and Mr. Moon discuss John</p> <p>12 Applegate at all?</p> <p>13 A. No, sir. At that point I was</p> <p>14 still upset. I mean, I was -- I was fired</p> <p>15 up. I had been treated like crap, treated</p> <p>16 like trash, accused of something I didn't</p> <p>17 do; gone through the wringer for several,</p> <p>18 several months. No, I was just upset. I</p> <p>19 was bad upset. I had never had nothing like</p> <p>20 that happen to me in my life.</p> <p>21 Q. Okay.</p> <p>22 A. I've got my evaluations from</p> <p>23 BE&K and everywhere. When I left BE&K and</p>
<p style="text-align: right;">Page 242</p> <p>1 about who had made the decision to terminate</p> <p>2 you?</p> <p>3 A. No, I did not.</p> <p>4 Q. Okay. Y'all didn't talk about</p> <p>5 anybody but Greg Prater?</p> <p>6 A. I didn't talk about Greg</p> <p>7 Prater. I asked -- He told me he would</p> <p>8 check into seeing why I got fired. I don't</p> <p>9 know who he talked to specifically, no. He</p> <p>10 said, like I say, it was either J.H. Kim or</p> <p>11 Ahn, one, and I told you the statements he</p> <p>12 made.</p> <p>13 Q. Okay. And he didn't say</p> <p>14 anything else?</p> <p>15 A. I don't know. He talked to my</p> <p>16 wife, you'll have to -- I don't know.</p> <p>17 Q. Okay. And is your wife's</p> <p>18 English perfect English?</p> <p>19 A. Pretty much.</p> <p>20 Q. If we were to take her</p> <p>21 deposition, would there be any reason we</p> <p>22 would need an interpreter?</p> <p>23 A. Not unless you don't speak</p>	<p style="text-align: right;">Page 244</p> <p>1 went to International Paper, I got a</p> <p>2 fifty-three out of fifty-four rating. I had</p> <p>3 outstanding marks on my record. I've had</p> <p>4 outstanding marks everywhere I worked. I've</p> <p>5 never been accused of sleeping or had a</p> <p>6 blemish on my record.</p> <p>7 Q. Okay. Let's talk a little bit</p> <p>8 about in your complaint you've included as</p> <p>9 count number two an outrage claim. That</p> <p>10 starts on, I guess, page seven on your</p> <p>11 complaint.</p> <p>12 What's indicated here in count</p> <p>13 two suggests that Hyundai intentionally</p> <p>14 created a harassing environment and</p> <p>15 subjected Dees to a pattern of intentional</p> <p>16 harassment regarding Dees' membership in the</p> <p>17 Guard and Dees' Guard service obligations.</p> <p>18 MR. KILBORN: Are you</p> <p>19 referring to a specific paragraph?</p> <p>20 MR. JOHNSON: Paragraph</p> <p>21 twenty-four.</p> <p>22 MR. KILBORN: Take a look at</p> <p>23 twenty-four.</p>

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<p style="text-align: right;">Page 245</p> <p>1 Q. If you want to look at that 2 paragraph, you can, Mr. Dees. 3 Have you read it? 4 A. Yes, sir. 5 Q. Okay. Other than the things 6 that we have already talked about, which is 7 obviously quite a bit, are there any other 8 facts that you're aware of to suggest that 9 Hyundai intentionally created a harassing 10 environment? 11 A. Yes, sir. Like I said, right 12 from the time it started, my Guard service 13 was a -- the center of everything, until my 14 termination. 15 Q. Okay. And you've indicated 16 that. Is there anything else that you're 17 relying on to support your outrage claim 18 factually? 19 A. Like I said, you've got a team 20 leader still working out there that said 21 Prater came down a week ago and told him 22 that Applegate told him to get rid of me, 23 that he needed to get rid of me.</p>	<p style="text-align: right;">Page 247</p> <p>1 what you're telling me now? 2 A. Yes, sir. 3 Q. And this was -- when Prater 4 came was when? 5 A. About a week ago, I think. 6 Q. And Bill Seivers told Mark 7 Bornberg that Prater had recordings? 8 A. Of Applegate stating -- 9 telling him he needed to get rid of me. 10 Q. All right. When were they 11 made? 12 A. I have no idea. You'll have 13 to ask Applegate and Prater. 14 Q. Do you have any idea, based on 15 your discussions with Mark Bornberg, why, 16 apparently, Greg Prater came to Bill 17 Seivers' house to talk to him? 18 A. I have no idea. 19 Q. Do you have any idea why they 20 would have talked about this situation? 21 A. You'll have to ask Bill 22 Seivers that, or Prater. 23 Q. And, again, I just want to</p>
<p style="text-align: right;">Page 246</p> <p>1 Q. Who said this and when did 2 they say it? 3 A. Bill Seivers, he's a team 4 leader on one of the shifts out there now. 5 Q. When did you talk to him? 6 A. I didn't. You'll get a chance 7 to talk to him when you go back to the 8 plant, I reckon. Prater came by his house a 9 week ago and made the comment that he had 10 recordings of Applegate making the comment 11 he needed to get rid of me. 12 Q. And you didn't talk to Bill 13 Seivers? 14 A. No, sir. 15 Q. Do you know who talked to Bill 16 Seivers and told him he needed to get rid of 17 you? 18 A. Yes, sir. Mark Bornberg. 19 Q. So Mark Bornberg talked to 20 Bill Seivers? 21 A. Yes, sir. They work together 22 everyday. 23 Q. And called you and told you</p>	<p style="text-align: right;">Page 248</p> <p>1 know what you know. If you don't know 2 anything, that's fine. 3 Did you work with Bill 4 Seivers? 5 A. Yes, sir. He was a team 6 leader on the other shift. 7 Q. Okay. Was Bill Seivers 8 somebody you were close to? 9 A. I mean, yeah, we worked -- 10 Like I said, everybody in our section, we 11 lived there, twelve hours a day, sometimes 12 seven days a week. 13 Q. Okay. Were he and Prater 14 particularly close? 15 A. I don't know. You'll have to 16 ask them about that. 17 Q. Okay. Another thing that 18 you've indicated in your outrage claim on 19 page seven of your complaint is that this 20 situation caused you severe emotional 21 distress. 22 What -- I mean, what kind of 23 severe emotional distress have you suffered?</p>

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<p style="text-align: right;">Page 249</p> <p>1 A. I have never, never had a 2 blemish on any record, as I've stated 3 before, military or civilian. When you're 4 standing there among your friends, you've 5 got security guards coming in telling you 6 you've got to go, treating you like a 7 criminal, they won't even let you go get 8 your personal property, that HMMA says 9 belongs to them once it gets through that 10 gate, says it's no longer yours, it's 11 theirs, you can't go get it; walking you 12 out, surrounding you like you're a crook. 13 Here I have -- Like I said, I 14 ain't no war hero, but I served my country 15 proudly so they can act like that and that 16 ain't -- I was walked out like a criminal. 17 When I got to that building, that security 18 building, I walked in, everybody is just 19 standing there bowed up and everything. I'm 20 the focus of attention and it ain't good. 21 I'm walked in a room, I'm sat down, this 22 lady introduces herself, the next gentleman, 23 the next gentleman, and then she reads me a</p>	<p style="text-align: right;">Page 251</p> <p>1 that was very hard to get, with better 2 benefits than I had on active duty in the 3 military, to unemployed. Then I've got to 4 go home and try to comfort her. All my 5 friends at work, everybody -- there's a lot 6 of people that work there, then they're 7 looking at you like why did you get fired? 8 Yeah, it hurt. That ain't right. 9 Q. It sounds to me like you got a 10 significant amount of problems with the way 11 in which the termination was conducted? 12 A. It ain't just the way. Why 13 was I terminated? 14 Q. Okay. 15 A. Like I said, they ignored 16 their own process. They got a seven -- six- 17 or seven-step process. I went from zero to 18 fired. After several complaints, even a 19 complaint -- a letter sent by my unit, and 20 it's the same complaint the whole time, all 21 of a sudden I'm fired for an accusation that 22 occurred in a matter of five minutes. No. 23 Q. Any other facts you can point</p>
<p style="text-align: right;">Page 250</p> <p>1 letter, slams it down on the table, face 2 down. When I asked her questions, she's 3 short, very rude, gets up and walks out. 4 And then, the only thing 5 they're worried about is getting your little 6 security lock, your safety lock, and the 7 keys. And you ask why come I'm being fired? 8 What happened to your firing process? They 9 act like you're not even there; they don't 10 even want to acknowledge you. You get 11 walked out, you're dropped off down here 12 (indicating), your truck is three gates up. 13 Security guard volunteered to take me to my 14 truck. When I get to my truck, I had to 15 call them aside to get them to bring me my 16 tool bag, and then they got on to Shane 17 Archer for bringing me my tool bag that I 18 had purchased with my money, that they said 19 now belonged to them because I brought it in 20 that gate. I go home, my wife, I call her, 21 she's crying. 22 All of a sudden I've gone from 23 a very, very good job that I wanted to keep,</p>	<p style="text-align: right;">Page 252</p> <p>1 to that have resulted in severe emotional 2 distress? 3 A. Made it look like my military 4 career wasn't worth a flip. Made it look 5 like I was just some piece of trash come up 6 looking for a job. 7 Q. Is that all the facts that 8 you're relying on to support your severe 9 emotional distress claim? 10 A. Is that all the facts? No. 11 My wife is still -- Everybody is still like: 12 I can't believe Leon got fired. 13 Q. Tell me how -- I mean, tell me 14 how else it has impacted you. 15 A. It impacted me financially big 16 time. I go from a job where I'm bringing 17 home real good money, insurance, like I 18 said, better than I had in the military, to 19 a job where -- I'm just jobless. And the 20 only reason I got a job the next day, is 21 because of a fellow I grew up with that I'd 22 known all my life. Because when I went in 23 to fill out the job application the next</p>

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<p style="text-align: right;">Page 253</p> <p>1 morning, the fellow told me, he asked me, 2 why did you leave Hyundai. I told him, I 3 said, I got fired. He said, I'm going to 4 tell you straight up, if it hadn't been for 5 your friend there recommending you, I would 6 not have hired you. 7 Q. Who was your friend that 8 recommended you? 9 A. James Daniel Smitherman. 10 Q. Smitherman? 11 A. Yes, sir. They told me 12 straight up they wouldn't have hired me 13 simply because I had been fired. I didn't 14 lie to them, I told them why I was fired, 15 said they accused me of sleeping on the job. 16 And when I got on with International Paper, 17 same thing, if I hadn't been working there 18 for five months and they hadn't seen my work 19 performance, they told me they would not 20 have hired me. Because I told them, same 21 thing, they asked me why I left Hyundai, I 22 told them the circumstances, everything, I 23 didn't holdback. I told them everything.</p>	<p style="text-align: right;">Page 255</p> <p>1 A. I don't know. 2 Q. All night? 3 A. All night the first few 4 nights, yeah. I've never -- I told you I've 5 never, never had a blemish on my record. 6 Q. Since those first few nights, 7 have you lost any sleep over it? 8 A. I don't know. I mean, there's 9 times me and her talk about it, yeah. I've 10 never been treated like that, never. 11 Q. All right. Are there any 12 other sort of psychological problems that 13 you've had as a result of the emotional 14 distress of this incident? 15 A. Yeah. Every time I go to fill 16 out an application anywhere it says have you 17 ever been terminated? Yes, I have. And 18 why? 19 Q. Are you filling out job 20 applications currently? 21 A. No. But even if you go to a 22 bank and fill out a loan application, 23 they'll ask if you've ever been terminated</p>
<p style="text-align: right;">Page 254</p> <p>1 And they said, you better be glad we saw 2 your work performance and James recommended 3 you or you would not be getting this job. 4 Q. Okay. In terms of the severe 5 emotional distress you're claiming in this 6 lawsuit, did you ever talk to your pastor 7 about it, seek any counseling, go to the 8 doctor about it? 9 A. I'm a soldier, I don't have 10 time to talk to nobody and I had a family to 11 feed, a kid in college, a kid in high 12 school. I had to work because I wasn't 13 making nowhere near what I was bringing home 14 out there. 15 Q. Did it have any physical 16 impact on you at home? I mean did you cry a 17 lot? 18 A. I don't cry. Unless my friend 19 is dead, I don't cry. 20 Q. Did you lose sleep over it? 21 A. Yeah. When you get fired, I 22 stayed wake all night several nights. 23 Q. How many nights?</p>	<p style="text-align: right;">Page 256</p> <p>1 from a job. I'm an honest person, like I 2 said, I'll tell you when I mess up. And 3 I've got to put yes, and they're going to 4 ask my why and I've got to tell them. 5 Q. Have you received any medical 6 treatment as a result of emotional distress 7 as a result of this incident? 8 A. I told you, I've got a family 9 with a kid in college, I ain't got time to 10 seek nothing, I've got to make money. 11 I've got a girl that's in a 12 third year in college and junior in high 13 school, I don't have time to go talk to 14 nobody. I got bills to pay, like everybody 15 else. 16 Q. You mentioned that Shane 17 Archer had gotten your tool bag? 18 A. Yes, sir. And they got onto 19 him for that. They threatened to fire him. 20 Q. I want to make sure I 21 understand what was going on there. I 22 assume your tool bag -- Where was your tool 23 bag when he went to get it?</p>

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<p style="text-align: right;">Page 257</p> <p>1 A. It was in the plant back there 2 in the stamping section. I don't even 3 remember where I left it. 4 Q. So when they had come to get 5 you before they went and cleaned out your 6 locker and gave you your jacket, had you had 7 your tool bag with you somewhere out in the 8 plant, you just left it there? 9 A. Yes, sir. 10 Q. When they came up to you? 11 A. Yes, sir. 12 Q. Where did Shane Archer bring 13 it to you? 14 A. He brought it to the gate up 15 there in front of body weld, up there where 16 I parked. 17 Q. Okay. And that was after you 18 sat down with Wendy Warner and the others to 19 talk about the termination? 20 A. They kicked me out of the 21 plant, I couldn't get back in. As a matter 22 of fact, the guard that gave me a ride to my 23 truck, come back around there to the gate</p>	<p style="text-align: right;">Page 259</p> <p>1 document before? 2 MR. SPORT: Matt, while he's 3 looking at that, would you mind -- if the 4 document is Bates numbered, putting the 5 Bates number in the Record? 6 MR. JOHNSON: The only reason 7 I wouldn't, is because some of these are our 8 documents and some are your documents, so 9 the Bates numbers -- if I say it's Bates 10 number 35 -- 11 MR. SPORT: Just read the 12 Bates number into the Record. 13 MR. JOHNSON: I know. But if 14 I say Bates number 35, it could be my Bates 15 number 35 or your Bates number 35. 16 MR. SPORT: Well, no, your 17 Bates sequence is Dees V. HMMA and ours is 18 just Dees. So they are different. 19 MR. JOHNSON: Why don't we 20 just use the exhibit numbers. It's a 21 deposition, why don't we just use exhibit 22 numbers. 23 MR. SPORT: Okay. Well, I</p>
<p style="text-align: right;">Page 258</p> <p>1 and wanted to know why I was still there. 2 And Don Gillingham, something like that, the 3 body weld maintenance manager, he was 4 standing outside, about thirty feet down 5 from me. Apparently everybody but me knew I 6 was getting fired because he called security 7 and asked what I was still doing there, when 8 all I'm doing is waiting on my tool bag. I 9 was treated like a thug, and I don't like 10 it. I might as well have been a prisoner of 11 war somewhere. 12 THE WITNESS: Let me take a 13 break and go check on my wife. 14 MR. JOHNSON: Okay. That's 15 fine. 16 (Recess taken.) 17 (Whereupon, Defendant's 18 Exhibit No. 6 was marked 19 for identification.) 20 Q. Mr. Dees, this is something 21 we've marked as Exhibit 6 to your 22 deposition. Can you take a look at that and 23 tell me whether that -- you've seen this</p>	<p style="text-align: right;">Page 260</p> <p>1 don't know why you would be opposed to 2 putting the Bates number in the Record. 3 MR. KILBORN: Well, I'll put 4 it in there. It's Dees versus HMMA 00035. 5 Q. Have you read it? 6 A. Yes, sir. 7 Q. Several lines down there in 8 bold print it suggests that -- or Greg 9 Prater suggests that during his discussion 10 with you at one point you responded by 11 saying, quote, I just don't give a damn. 12 You guys just do whatever you want. I'm fed 13 up with this -- and I'll spell -- S-H-I-T, 14 period, end quote. 15 Do you recall ever making a 16 statement similar to that? 17 A. A statement I made to him. 18 Then he referred to -- You've got to look at 19 it if you were a forward observer on lookout 20 guard duty. The statement I made to him is, 21 if I were the lookout on guard duty, I 22 wouldn't be sleeping. 23 Q. So are you saying you did not</p>

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<p style="text-align: right;">Page 261</p> <p>1 make the comment he has in bold print there?</p> <p>2 A. No, sir, I did not.</p> <p>3 Q. Okay. Not at that time, and</p> <p>4 never at any time?</p> <p>5 A. (Witness shakes head in the</p> <p>6 negative.)</p> <p>7 Q. When you say you remember --</p> <p>8 Are you saying you don't remember making it</p> <p>9 or you know you didn't make it?</p> <p>10 A. No, sir, I didn't -- I didn't</p> <p>11 cuss him like that.</p> <p>12 Q. Okay.</p> <p>13 A. And I didn't make --</p> <p>14 Q. When you say you didn't cuss</p> <p>15 him like that, is that because you don't use</p> <p>16 curse words?</p> <p>17 A. Try not to.</p> <p>18 Q. Okay. When you say try not</p> <p>19 to, do you succeed or do you use them?</p> <p>20 A. Most of the time I do.</p> <p>21 Q. Okay. Is it your testimony</p> <p>22 that you did not use curse words at Greg</p> <p>23 Prater?</p>	<p style="text-align: right;">Page 263</p> <p>1 firing process, they have to tell you.</p> <p>2 Q. All right. Now, so in terms</p> <p>3 of this process, did you ever raise that</p> <p>4 issue? Did you ever say, hey, somebody,</p> <p>5 it's not right to terminate me, I haven't</p> <p>6 gone through the process?</p> <p>7 A. That lady.</p> <p>8 Q. Wendy Warner?</p> <p>9 A. That's her.</p> <p>10 Q. Okay.</p> <p>11 A. And like I said, it's like I</p> <p>12 wasn't even talking.</p> <p>13 Q. Did she respond to you or say</p> <p>14 anything about that process?</p> <p>15 A. No, sir.</p> <p>16 Q. Okay. Now, I mean, in terms</p> <p>17 of processes and procedures, did you engage</p> <p>18 in any subsequent processes or procedures</p> <p>19 after your termination to try to get your</p> <p>20 job back or try to get the situation</p> <p>21 changed?</p> <p>22 A. I called them about the --</p> <p>23 what's it called?</p>
<p style="text-align: right;">Page 262</p> <p>1 A. No, sir, I did not.</p> <p>2 Q. Did you use any at anybody at</p> <p>3 the plant?</p> <p>4 A. No, sir.</p> <p>5 Q. Okay. Did you use curse words</p> <p>6 around your coworkers?</p> <p>7 A. No, sir. Most of the time --</p> <p>8 If I mash my finger or something.</p> <p>9 No, sir, I try not to, and</p> <p>10 most of the time I don't. I'm not going to</p> <p>11 sit here and tell you no, I never do it.</p> <p>12 Q. In your conversations with</p> <p>13 Greg Prater, at any point in time did you</p> <p>14 ever ask him, what can I do about this</p> <p>15 situation? How can I keep my job? What can</p> <p>16 I do to keep my job?</p> <p>17 A. I didn't think my job was in</p> <p>18 jeopardy at that point. Like I said, they</p> <p>19 have a six- or seven-step firing process. I</p> <p>20 haven't even entered phase one at this step,</p> <p>21 at this phase. I have not entered the</p> <p>22 firing process whatsoever. Any time you --</p> <p>23 Lucas Cooner told us, any time you enter a</p>	<p style="text-align: right;">Page 264</p> <p>1 Q. Team member review?</p> <p>2 A. That's it.</p> <p>3 Q. Okay. Tell me about that.</p> <p>4 Who did you call?</p> <p>5 A. I never could get ahold of</p> <p>6 nobody. I had Rob Clevenger's number, I</p> <p>7 think, and I never saw him. I'd leave him</p> <p>8 messages and he'd leave me messages.</p> <p>9 Q. So y'all traded messages?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Did Wendy Warner ever call</p> <p>12 you?</p> <p>13 A. No, sir.</p> <p>14 Q. Did anybody but Rob Clevenger</p> <p>15 ever call you about the review process?</p> <p>16 A. I don't think so. I don't</p> <p>17 know.</p> <p>18 Q. Okay. Do you remember getting</p> <p>19 a letter from Wendy Warner indicating when</p> <p>20 the team member review would be scheduled</p> <p>21 for?</p> <p>22 A. Yeah. I got it on a Saturday</p> <p>23 evening and that review was supposed to have</p>

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<p style="text-align: right;">Page 265</p> <p>1 been a Monday morning. 2 (Whereupon, Defendant's 3 Exhibit No. 7 was marked 4 for identification.) 5 Q. Okay. And let me mark as 6 Exhibit 7, a copy of the letter. 7 MR. JOHNSON: For Mr. Sport 8 and Mr. Kilborn's benefit, that's Dees V 9 HMMA document 1. 10 MR. KILBORN: Thank you. 11 Q. Mr. Dees, what we've marked 12 there as Exhibit 7, do you recall receiving 13 that letter at your home? 14 A. Yes, sir. 15 Q. And you say you received that 16 on a Saturday? 17 A. Yes, sir. 18 Q. Okay. And then the review was 19 scheduled for the following Monday? 20 A. Yes, sir. 21 Q. Okay. And it was scheduled 22 for ten o'clock in the morning? 23 A. Yes, sir.</p>	<p style="text-align: right;">Page 267</p> <p>1 Hyundai that you got another job and it 2 conflicts with that ten o'clock meeting? 3 A. I got this letter Saturday 4 evening. Monday morning you're not going to 5 get ahold of anybody there. 6 Q. Had you ever left a voicemail 7 with Rob Clevenger saying that you had 8 another job and telling him when it ought to 9 be scheduled? 10 A. No, sir. This letter and 11 those two little messages, the only thing I 12 got was that I met the requirements, and 13 that was it. I didn't know what was going 14 on, I never could get ahold of nobody there. 15 Q. Did you write them a letter? 16 A. No, sir, I did not. 17 Q. Were you keeping notes about 18 what was going on at this point in time? 19 A. No, sir. I had to make money. 20 Q. Okay. 21 A. Because I had to work a lot of 22 hours because I wasn't making nowhere near 23 what I was making.</p>
<p style="text-align: right;">Page 266</p> <p>1 Q. And did you attend? 2 A. No, sir. 3 Q. Did you call Wendy Warner to 4 talk about it? 5 A. No, sir. 6 Q. Did you call Rob Clevenger to 7 talk about it? 8 A. No, sir. 9 Q. Did you call anybody to say I 10 can't be there at ten? 11 A. No, sir. I believe I talked 12 to my lawyers about it. 13 Q. Okay. And after talking to 14 your lawyers, you didn't show up? 15 A. No, sir. The reason I didn't 16 show up, because I had a job that was paying 17 a little bit, even though it wasn't paying 18 what I was making at Hyundai. And if I had 19 taken off from a job, not only being there a 20 week or two to go to meet to try to get my 21 old job, I wouldn't have had a job when I 22 got back the next day. 23 Q. Did you tell anybody at</p>	<p style="text-align: right;">Page 268</p> <p>1 Q. You said you were keeping 2 notes when you were at Hyundai, you were 3 making money then, weren't you? 4 A. Yes, I was. 5 Q. And you were working? 6 A. Yes, sir. 7 Q. And you were keeping notes 8 then? 9 A. I didn't have the problems I 10 was having then. 11 Q. And this was still going on 12 later? 13 A. There was no one to talk to, 14 what notes was there to keep? I had two 15 messages on my answering machine. What else 16 is there to keep? I kept the messages. 17 Q. Do you think they were both 18 from Rob Clevenger? 19 A. I don't remember. I know one 20 of them was. I don't remember if both of 21 them were or not. I don't know. 22 Q. So you remember one of them 23 was from Rob Clevenger?</p>

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<p style="text-align: right;">Page 269</p> <p>1 A. Yes, sir.</p> <p>2 Q. And the other may have been</p> <p>3 from him, may have been from somebody else?</p> <p>4 A. May have been.</p> <p>5 Q. Do you know when those</p> <p>6 telephone messages came in?</p> <p>7 A. According to this, it says</p> <p>8 March the 2nd and March the 7th. May or may</p> <p>9 not have been, I don't know. Like I said,</p> <p>10 my world had been turned upside down.</p> <p>11 Q. Do you recall receiving the</p> <p>12 initial phone message on March the 2nd?</p> <p>13 A. I don't believe so.</p> <p>14 Q. And do you know whether that</p> <p>15 was from Rob Clevenger or who?</p> <p>16 A. I don't remember.</p> <p>17 Q. Do you remember returning that</p> <p>18 call immediately?</p> <p>19 A. No, sir. Because it was late</p> <p>20 in the evening, I had gotten home from work</p> <p>21 late.</p> <p>22 Q. All right. Did you return</p> <p>23 that call the next day?</p>	<p style="text-align: right;">Page 271</p> <p>1 would have selected from or how it would</p> <p>2 have been done?</p> <p>3 A. I didn't know anything about</p> <p>4 the process at all.</p> <p>5 Q. And you didn't show up to find</p> <p>6 out?</p> <p>7 A. No, sir. Like I said, I had</p> <p>8 to work. I couldn't take a chance on losing</p> <p>9 a job that I had gotten through a friend to</p> <p>10 try and look, maybe possibly one in a</p> <p>11 million shot getting a job back that I had</p> <p>12 been fired from.</p> <p>13 Q. You never called Rob Clevenger</p> <p>14 that morning before you went to work to tell</p> <p>15 him you couldn't make it?</p> <p>16 A. No, sir.</p> <p>17 Q. And you never called him</p> <p>18 since, did you?</p> <p>19 A. No, sir.</p> <p>20 Q. Are you aware of any other</p> <p>21 process at Hyundai that might possibly allow</p> <p>22 you to get your job back, other than this</p> <p>23 team member review process?</p>
<p style="text-align: right;">Page 270</p> <p>1 A. I may have. I don't know.</p> <p>2 Q. All right. Do you remember</p> <p>3 returning that call before March the 5th?</p> <p>4 A. I don't know. I don't recall.</p> <p>5 Q. All right. Do you remember</p> <p>6 returning that call before March the 7th?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay. And, again, was it your</p> <p>9 understanding when you received this letter</p> <p>10 marked Exhibit 7, that the -- you were</p> <p>11 supposed to meet with Rob Clevenger on that</p> <p>12 Monday morning to talk about the review</p> <p>13 process?</p> <p>14 A. Yes, sir. That wasn't a</p> <p>15 guarantee that I was going to get a job</p> <p>16 back. That was just a selected panel to see</p> <p>17 about getting the job back, to go back into</p> <p>18 the firing.</p> <p>19 Q. Did you know how the panel</p> <p>20 selection process worked?</p> <p>21 A. No, sir.</p> <p>22 Q. Do you know whether it would</p> <p>23 have been a panel of your peers that you</p>	<p style="text-align: right;">Page 272</p> <p>1 A. I don't know. I don't know</p> <p>2 what they have.</p> <p>3 Q. Okay. But the one you did</p> <p>4 know of, you didn't use, did you?</p> <p>5 A. At that point, no, sir. Like</p> <p>6 I said, I had a family to feed. I can't</p> <p>7 afford to lose one job for a job I had been</p> <p>8 fired from already. If I'd have left that</p> <p>9 job to try and get that review back, I might</p> <p>10 not have got another job.</p> <p>11 (Whereupon, Defendant's</p> <p>12 Exhibit No. 8 was marked</p> <p>13 for identification.)</p> <p>14 Q. Let's mark this as Exhibit 8.</p> <p>15 And this is Dees 3.</p> <p>16 Mr. Dees, have you had a</p> <p>17 chance to look at Exhibit 8?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. Are you familiar with</p> <p>20 that exhibit?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. Tell me what it is.</p> <p>23 A. It's a yearly training</p>

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1 calendar schedule for my unit.
 2 **Q. For a period beginning October**
 3 **2006?**
 4 A. Yes, sir.
 5 **Q. Is this -- We talked earlier**
 6 **about y'all get a training schedule on an**
 7 **annual basis. Was this what you were**
 8 **talking about there?**
 9 A. Yes, sir.
 10 **Q. Okay. Would this -- Am I**
 11 **correct that this would show all training**
 12 **dates beginning October 21 of '06 through**
 13 **that training year?**
 14 A. When this schedule was made,
 15 yes, sir. They were subject to change and
 16 subject to be added to and taken from.
 17 **Q. Okay. Do you know if from**
 18 **October 21st going forward, it was in fact**
 19 **changed, added to, or subtracted from?**
 20 A. You'd have to call my unit and
 21 ask them.
 22 **Q. Again, I'm asking you if you**
 23 **know.**

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1 A. I don't remember. It may
 2 have, may not have been. I don't know.
 3 **Q. Okay. Do you know -- You'd**
 4 **indicated there was sort of an initial point**
 5 **at which Greg Prater demanded orders. Do**
 6 **you know if any of the -- if any of these**
 7 **are the dates that he demanded orders for?**
 8 A. Probably several of them.
 9 **Q. You think more than one**
 10 **possibly?**
 11 A. It had to have been October.
 12 Like I said, it was several, several months.
 13 (Whereupon, Defendant's
 14 Exhibit No. 9 was marked
 15 for identification.)
 16 **Q. Okay. And let's go ahead,**
 17 **just so you can have both documents, also**
 18 **mark as Exhibit 9, your '05 schedule.**
 19 A. This is an '06 schedule. It
 20 says '06 on top.
 21 MR. SPORT: I was wondering
 22 where you got the '05, because I don't have
 23 it.

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1 MR. JOHNSON: It's Dees 4.
 2 A. You got 1 October 05 in the
 3 upper right-hand corner, but your month and
 4 dates say '06. This is the company training
 5 schedule, this is my detachment training
 6 schedule.
 7 **Q. Okay. Let me make sure.**
 8 MR. SPORT: So somewhere on
 9 this document is an error, we just don't
 10 know what it is. It's either in the dates
 11 or it's on the date of the document. We
 12 don't know what it is.
 13 A. This one has company
 14 commander's signature (indicating), this one
 15 has my detachment commander's signature
 16 (indicating).
 17 **Q. All right. Well, let me get**
 18 **these marked and we'll talk through them and**
 19 **figure out what they show.**
 20 All right. So if we look at
 21 -- What we've marked Exhibit 9, that shows a
 22 date of October 1, of '05, but it has drill
 23 dates in '06; correct?

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1 A. Yes, sir.
 2 **Q. Does that -- Does that make**
 3 **sense to you?**
 4 A. No. I mean, I don't know.
 5 You'll have to call my unit and ask them.
 6 **Q. Okay.**
 7 A. That would be Sergeant Barnes.
 8 **Q. Look at the fax numbers there**
 9 **at the top. Do you recognize any of those**
 10 **fax numbers?**
 11 A. Yes, sir.
 12 **Q. What is the -- Do you**
 13 **recognize the 334-366-5278?**
 14 A. Yes, sir. That's to my wife.
 15 **Q. That's to your wife?**
 16 A. Yes, sir.
 17 **Q. And the date of that fax**
 18 **letter is March 26 of '07; correct?**
 19 A. Yes, sir.
 20 MR. SPORT: Matt, if I can
 21 interrupt you.
 22 MR. JOHNSON: Sure.
 23 MR. SPORT: It appears those

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<p>1 two pages, page three and four, are pages 2 three and four of a fax that starts with 3 Dees 1 and 2, which you've already marked 4 earlier as Exhibit whatever. 5 MR. JOHNSON: Okay. 6 MR. SPORT: So it appears on 7 March 26th, Sergeant Barnes faxed all four 8 of those pages. And Dees 5 is simply the 9 original of the fax version of Dees 3. I 10 don't know if that clears anything up, but 11 that's the way it appears. 12 Q. Okay. Well, let's go back on 13 the Record. 14 Just so I can make sure, if we 15 look at Exhibit 6 and Exhibit -- I'm sorry, 16 Exhibit 8 and Exhibit 9, the 334-366-5278 17 fax number is to your wife; correct? 18 A. Yes, sir. 19 Q. And the date is March the 20 26th? 21 A. Same day as the letter. 22 Q. Same day as the letter, which 23 we previously marked as Exhibit 5. So if</p>	<p>1 A. Company commander is over the 2 detachment commander, we fall under the 3 company. 4 Q. So would Shawn Dall have been 5 higher up the chain of command than Kevin 6 Smith? 7 A. No, sir. 8 Q. I got it backwards? 9 A. Yes, sir. Company is down in 10 Fairhope, we're up in Brewton. 11 Q. Why would orders come from two 12 different places? Would they not always 13 come from the same place? 14 A. That's not orders. That's 15 just the schedule. 16 Q. Why would the schedule come 17 from two different places? 18 A. Because we're not in the same 19 building as the company. Our company is 20 down in Fairhope, we're up in Brewton. 21 We're in two separate locations. 22 Q. Okay. Now, what is the -- and 23 the company is the 1165th Detachment 1?</p>
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<p>1 you'd look -- hold Exhibit 5 up there for 2 just a second. 3 A. (Witness complies.) 4 Q. All right. So, Mr. Dees, does 5 it make sense to you that Exhibit 5 goes 6 along with Exhibit 8 and 9, as a single fax? 7 A. Yes, sir. 8 Q. Okay. And it was sent from 9 the National Guard unit? 10 A. Yes, sir. 11 Q. Were you there on March the 12 26th of '07? 13 A. No, sir. I don't believe. I 14 believe that was a weekday. 15 Q. Okay. 16 A. And if it was, I was at work. 17 Q. And who is Kevin Smith? 18 A. Company commander. 19 Q. And who is Shawn C. Dall? 20 A. Detachment commander. 21 Q. Okay. What's the difference 22 between company commander and the detachment 23 commander?</p>	<p>1 A. We're Detachment 1, 3rd 2 Platoon, 1165th Military Police Company. 3 Q. Okay. So does the training 4 schedule ordinarily come from the detachment 5 or from the company? 6 A. That depends on the CO, what 7 he wants, what he tells that lieutenant to 8 do. 9 Q. Okay. And the CO being who? 10 A. CO being Lieutenant Smith, 11 which is no longer the CO. 12 Q. Who is now? 13 A. Captain Payne. 14 Q. What's his first name? 15 A. Captain. 16 Q. Or her first name? 17 A. I don't know. 18 Q. And Captain Payne is in 19 Fairhope? 20 A. Yes, sir. 21 Q. Did you keep records of your 22 training schedule? 23 A. I have one posted on my</p>

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<p style="text-align: right;">Page 281</p> <p>1 refrigerator at the house.</p> <p>2 Q. All right. Did you keep it</p> <p>3 for '06?</p> <p>4 A. Do I have it now is what</p> <p>5 you're saying?</p> <p>6 Q. Yes.</p> <p>7 A. Whatever this current year's</p> <p>8 training schedule is on my refrigerator,</p> <p>9 yes.</p> <p>10 Q. All right. But --</p> <p>11 A. Did I keep them from the</p> <p>12 previous?</p> <p>13 Q. Right.</p> <p>14 A. No.</p> <p>15 Q. Okay. Do you have -- Do you</p> <p>16 have a training schedule for the period</p> <p>17 beginning the first part of '07? Will that</p> <p>18 -- I assume that's Exhibit 8 here?</p> <p>19 A. Yes, sir. My company went to</p> <p>20 Fort McClellan for AT this summer, and I</p> <p>21 went this year and I went to Belize for AT.</p> <p>22 Q. AT being annual training?</p> <p>23 A. Annual training.</p>	<p style="text-align: right;">Page 283</p> <p>1 Q. I want to mark those as</p> <p>2 Exhibit 10.</p> <p>3 (Whereupon, Defendant's</p> <p>4 Exhibit No. 10 was marked</p> <p>5 for identification.)</p> <p>6 MR. SPORT: Matt, do I</p> <p>7 understand you'd like me to get you a little</p> <p>8 more legible copy than that?</p> <p>9 MR. JOHNSON: Yes.</p> <p>10 MR. SPORT: I'll scan it and</p> <p>11 e-mail it to you.</p> <p>12 MR. JOHNSON: That would be</p> <p>13 great. I would appreciate that.</p> <p>14 Q. Mr. Dees, let me let you look</p> <p>15 at Exhibit 10. Unfortunately we're going to</p> <p>16 have to share a little bit on Exhibit 10,</p> <p>17 because it's the only copy we've got -- or</p> <p>18 it's the only copy I've got.</p> <p>19 MR. JOHNSON: Do we have</p> <p>20 another copy? Doesn't matter. Just so I</p> <p>21 understand, has any portion of this been</p> <p>22 redacted, Jeff?</p> <p>23 MR. SPORT: Yes.</p>
<p style="text-align: right;">Page 282</p> <p>1 Q. And where did that take place</p> <p>2 -- I mean when did that take place?</p> <p>3 A. 12 May through 26 May.</p> <p>4 Q. And the training that you were</p> <p>5 just on?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Tell me what that was called</p> <p>8 again.</p> <p>9 A. Basic Noncommissioned Officers</p> <p>10 Course Phase II and III.</p> <p>11 Q. And was your current employer</p> <p>12 aware you were going on that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And is your current employer</p> <p>15 aware that you are back?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. Is your current</p> <p>18 employer aware that you are here today?</p> <p>19 A. Yes, sir.</p> <p>20 Q. We've gotten a copy of some</p> <p>21 cell phone records from your attorneys that</p> <p>22 were faxed to us here today.</p> <p>23 A. Yes.</p>	<p style="text-align: right;">Page 284</p> <p>1 MR. JOHNSON: Do you know</p> <p>2 which portion has been redacted?</p> <p>3 MR. SPORT: Account number and</p> <p>4 carrier.</p> <p>5 MR. JOHNSON: I can see where</p> <p>6 account number is redacted, invoice number</p> <p>7 is redacted --</p> <p>8 MR. SPORT: And the carrier's</p> <p>9 name appears on the page and we redacted</p> <p>10 that. All the phone call information --</p> <p>11 MR. JOHNSON: You mean who</p> <p>12 provided the cell phone service?</p> <p>13 MR. SPORT: Yes.</p> <p>14 MR. JOHNSON: You mean you're</p> <p>15 not going to tell us who he got his cell</p> <p>16 phone from?</p> <p>17 MR. SPORT: I don't think</p> <p>18 you're entitled to it.</p> <p>19 MR. JOHNSON: Well, I'm going</p> <p>20 to ask him about it, and we can argue about</p> <p>21 that later.</p> <p>22 It also suggests here under</p> <p>23 detail for Leon, it says 334, did you redact</p>

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<p style="text-align: right;">Page 285</p> <p>1 his cell phone number?</p> <p>2 MR. SPORT: Yes.</p> <p>3 MR. JOHNSON: Are you not</p> <p>4 wanting us to know what cell phone number he</p> <p>5 used? I mean was it redacted on purpose?</p> <p>6 MR. SPORT: Yes.</p> <p>7 MR. JOHNSON: What was the</p> <p>8 purpose?</p> <p>9 MR. SPORT: We originally</p> <p>10 objected to it because of privacy reasons.</p> <p>11 It does have something -- The calls made</p> <p>12 around the date in question do have</p> <p>13 something to do with the case, so we</p> <p>14 produced that page, we just don't feel</p> <p>15 you're entitled to the rest of the</p> <p>16 information.</p> <p>17 Q. Okay. I'm going to ask you</p> <p>18 questions now about Exhibit Number 10.</p> <p>19 Mr. Dees, am I correct that it's your</p> <p>20 testimony today and previously that on the</p> <p>21 night in question, when Jim Brookshire saw</p> <p>22 you up on the third level, you were using</p> <p>23 your phone to send a text message to your</p>	<p style="text-align: right;">Page 287</p> <p>1 A. 13th, February 13th and 14th.</p> <p>2 Q. Okay. And you see a telephone</p> <p>3 call coming in on the 13th?</p> <p>4 A. I don't remember what day --</p> <p>5 What day are you talking about? What day</p> <p>6 are you wanting?</p> <p>7 Q. Well, what I understand to be</p> <p>8 the case, and subject to your agreement or</p> <p>9 disagreement, was that, at least according</p> <p>10 to the witness statements, Jim Brookshire</p> <p>11 saw you in the third level at approximately</p> <p>12 one a.m. on February 14th. So you would</p> <p>13 have been coming to work on the 13th, I</p> <p>14 assume.</p> <p>15 MR. KILBORN: Say that again.</p> <p>16 MR. JOHNSON: He was seen on</p> <p>17 February 14th and would have been -- started</p> <p>18 work on the afternoon or dinnertime on the</p> <p>19 13th.</p> <p>20 A. That's going to be it there,</p> <p>21 the Birmingham, Alabama. 671, whatever it</p> <p>22 is, six-something p.m.</p> <p>23 Q. Say that again.</p>
<p style="text-align: right;">Page 286</p> <p>1 daughter?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And what was the text message</p> <p>4 about?</p> <p>5 A. To let her know that I was</p> <p>6 okay.</p> <p>7 Q. Would there be any reason you</p> <p>8 would not be okay?</p> <p>9 A. Well, she was worried.</p> <p>10 Q. Well, when you say she was</p> <p>11 worried, how do you know she was worried?</p> <p>12 A. Because she called me before I</p> <p>13 got to work on my way to work, I believe.</p> <p>14 Q. Okay. You think she called</p> <p>15 you on your cell phone?</p> <p>16 A. Yes, sir. I believe it's on</p> <p>17 there.</p> <p>18 Q. All right. If you can, show</p> <p>19 me where that is.</p> <p>20 A. I can't for my life make out</p> <p>21 -- I don't know. I see the 14:45, incoming.</p> <p>22 Q. All right. What is the date</p> <p>23 you're looking at?</p>	<p style="text-align: right;">Page 288</p> <p>1 A. Right here (indicating),</p> <p>2 whatever this is here. There's two or</p> <p>3 three. It looks like my wife called or</p> <p>4 either the youngest daughter called from the</p> <p>5 house.</p> <p>6 Q. Are you looking on the 13th</p> <p>7 there?</p> <p>8 A. These right here (indicating).</p> <p>9 Q. The 5:23 p.m., I'm assuming</p> <p>10 that's what that says.</p> <p>11 A. Yeah.</p> <p>12 Q. And then six --</p> <p>13 A. Let's see. I start -- I think</p> <p>14 it's these two (indicating), from what I can</p> <p>15 see. I don't -- Six something, I don't know</p> <p>16 what that is.</p> <p>17 Q. All right. Well, let's just</p> <p>18 -- we'll break this thing out -- it says --</p> <p>19 the dotted lines going across, there's seven</p> <p>20 -- this is in the seventh area between the</p> <p>21 dotted lines.</p> <p>22 A. That's the Birmingham call</p> <p>23 there.</p>

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<p style="text-align: right;">Page 289</p> <p>1 Q. All right. The Birmingham 2 call from, and is that 205-389-5974? 3 A. Yes, sir, I believe that's it. 4 Q. All right. Whose number is 5 that? 6 A. That's one of her friends. 7 Q. That's one of your daughter's 8 friends? 9 A. Yes. 10 Q. So you think that was your 11 daughter calling from Birmingham? 12 A. They was down in the basement. 13 She had left her phone in the room. 14 Q. Okay. 15 A. They put them down in the 16 basement because of the weather. 17 Q. Okay. And the call right 18 before that, from a 334 number in 19 Maplesville, is that your home number or 20 your wife's number? 21 A. That's my home number. 22 Q. Okay. And then the next 23 number from Maplesville, I'm assuming that's</p>	<p style="text-align: right;">Page 291</p> <p>1 Q. Okay. Let me ask you here. 2 Looks like on February 14th, there's a 3 couple of incoming calls from -- I'm 4 guessing that's 334-419-1445? 5 A. That's my number. It says 6 incoming. I don't know who it was. 7 Q. That's your home phone number? 8 A. No, sir. That's my cell 9 number. I don't know who was calling. I 10 don't know. It just lists it as an incoming 11 call. 12 Q. Well, on your cell phone 13 records does it list as an incoming call -- 14 A. It's listed there as an 15 incoming call. 16 Q. I'm just trying to figure out, 17 it looks to me -- I'm just trying to read 18 your records, does it not make more sense 19 that the calls to Maplesville and Birmingham 20 were calls that were made by you to somebody 21 else? 22 A. No, sir. Like this here 23 (indicating), it lists my number, that means</p>
<p style="text-align: right;">Page 290</p> <p>1 also your home number? 2 A. Yes, sir. 3 Q. Okay. Can you read what time 4 that came in to you? 5 A. I have no idea. 6 Q. Okay. 7 A. Something P, twenty-eight P. 8 Q. All right. Now, do you carry 9 your personal cell phone with you when you 10 were in the plant? 11 A. Yes, sir. 12 Q. All the time? 13 A. Reason being, those radios -- 14 like I said, those radios, sometimes they 15 work, sometimes they didn't. A lot of times 16 we would -- Prater told us if we had a 17 breakdown over five or ten minutes, to call 18 him at home, no matter what time of the 19 night it was. And we got called by him on 20 our personal phones that we paid for the 21 calls a lot of times on breakdowns. I even 22 had to call Mr. Moon several times on 23 breakdowns.</p>	<p style="text-align: right;">Page 292</p> <p>1 they don't know who the number was that 2 called me. 3 Q. Oh, okay. So is it -- is this 4 all incoming calls or does it -- On your 5 phone records, does it separately list calls 6 that you made outgoing? 7 A. I ain't never been asked 8 before, so . . . 9 Q. All right. Does it separately 10 list calls -- text messages that goes out? 11 A. It just charges you for each 12 text message. 13 Q. Okay. Does it indicate when 14 you made those text messages? 15 A. No, sir. You just get a 16 charge. 17 Q. All right. Do you still have 18 the same telephone number? 19 A. Yes, sir. 20 Q. And have you reviewed your 21 telephone to see if you still have the text 22 messages on it from this period of time? 23 A. A year ago? No, sir. I never</p>

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<p style="text-align: right;">Page 293</p> <p>1 did get through that night. The weather was 2 bad. Sometimes it could be sunny outside 3 and for some reason you may not get through, 4 you may get through. 5 Q. And just to be safe, I want to 6 make sure we're clear. When you said a year 7 ago, I'm talking about back in February of 8 this year? 9 A. All right. This is November. 10 Q. Okay. I just want to make 11 sure you were also talking about February of 12 this year. 13 A. Yes, sir. 14 Q. Okay. Do you -- Do you have 15 any idea whether your cell phone records 16 show anything about text messages incoming 17 or outgoing as per a specific time? 18 A. You get a charge, ten cents 19 per message, period. 20 Q. And what is your complete 21 telephone number, cell phone number? And I 22 promise I won't use it to call you. 23 A. If you're writing it down, I</p>	<p style="text-align: right;">Page 295</p> <p>1 be an incoming call. 2 A. If I get an incoming call and 3 it comes up unknown number, they can't get 4 the number, they put my number down. 5 Q. Okay. And what about if it's 6 an incoming call from your daughter, what 7 does it show? 8 A. That's it right there, 9 Birmingham. 10 Q. And what if you make a call to 11 your daughter in Birmingham? 12 A. Well, hold on, let me see if I 13 can find one. 14 Q. And, again, this is for your 15 attorney's benefit -- 16 A. That may have been a call to 17 her friend's phone, I don't know. 18 MR. JOHNSON: Without the 19 complete records, Mr. Sport, I'm having a 20 difficult time making heads or tails of this 21 thing. 22 MR. SPORT: What else is 23 there?</p>
<p style="text-align: right;">Page 294</p> <p>1 ain't saying it. 2 Q. I need you to say it. 3 A. 334-419-1445. I thought you 4 weren't going to write it down. 5 Q. I never said that. 6 Again, I'll make a promise to 7 you, I'm not going to give it to anybody 8 who's going to give it out. 9 MR. KILBORN: That's covered 10 by the protective order we agreed on; right? 11 MR. JOHNSON: That's fine. I 12 agree. 13 Q. Do you know if you made any 14 outgoing telephone calls on the night in 15 question? 16 A. You've got the record. 17 Q. Okay. Again, it's hard for me 18 to, one, read it; and, two, it's hard to 19 tell which is incoming and which is 20 outgoing. I mean, are -- because I think 21 what you told me earlier was that the ones 22 that say, for instance, Birmingham, Alabama, 23 isn't necessarily an outgoing call, it might</p>	<p style="text-align: right;">Page 296</p> <p>1 MR. KILBORN: Hold on. We 2 gave you what you asked for. Now, we can 3 stop there. 4 We asked to inspect the plant. 5 Somebody on the legal team took the position 6 that we were a couple days late, therefore, 7 we couldn't inspect the plant. Now, I'll 8 give you plenty more discovery which I don't 9 have to give you, as an accommodation, but I 10 expect the same. 11 MR. JOHNSON: I think you have 12 to give us his cell phone records. I was 13 trying to be gracious to you and your client 14 by not demanding them all. And I haven't 15 demanded them all. All I'm doing is saying 16 now that we're at the deposition and I can't 17 make heads nor tails of it in order to 18 examine the witness, then it's appropriate 19 for me to get. 20 MR. KILBORN: This was covered 21 by your request for production, that's why 22 we gave it to you. 23 MR. JOHNSON: I think</p>

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<p>1 technically, it's all covered by the request 2 for production and the protective order. 3 MR. KILBORN: What period of 4 time? 5 MR. JOHNSON: For the night in 6 question, and that would include -- 7 MR. KILBORN: That is in 8 response to the request for production. 9 MR. JOHNSON: I think it's 10 fair for me to get the whole record. You're 11 giving me one page out of -- 12 MR. SPORT: What are you 13 asking me for? 14 MR. JOHNSON: What I'm asking 15 you for is all seven pages of that invoice 16 so I can make the interpretation fairly 17 whether or not there is other information 18 that helps me to interpret the single page 19 that you've provided in a redacted version. 20 I'm not fussing at you for 21 redacting it, that's perfectly fine with me. 22 What I'd like to see is the entire invoice. 23 And I also want --</p>	<p>1 incident. It does not necessarily mean that 2 you're not going to give me the entire 3 invoice. 4 MR. KILBORN: I think it does. 5 I'm just telling you that I don't mind 6 discussing a fair exchange of documents, but 7 I want the same consideration and not some 8 technicality that we were two days late. 9 Let me just say this. Let me 10 look at the entire bill. I don't 11 necessarily -- I don't necessarily think 12 there's a problem, but I don't think it's 13 going to help you and here's why. I used to 14 be with a carrier that provided a bill like 15 this. My current carrier actually shows to 16 and from, so you know if it's outgoing or 17 incoming. These don't do that. But my 18 former carrier that gave me a bill identical 19 to this, this is what it means, and you can 20 make this out, kind of sort of. And when I 21 give you the cleaner copy, you'll be able to 22 see. This says number called, that's that 23 column title, this column is entitled</p>
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<p>1 MR. KILBORN: What did you ask 2 for? 3 MR. JOHNSON: I asked for the 4 whole thing and he said he would provide me 5 records -- 6 MR. KILBORN: You did? 7 MR. JOHNSON: -- from the 8 evening in question. 9 MR. KILBORN: Will you show me 10 that request? 11 MR. JOHNSON: Okay. 12 All I can say is that by fax 13 dated August the 9th, your partner, 14 Mr. Sport, said: Your statement that we 15 agreed to, quote, produce copies of your 16 client's mobile phone records inclusive of 17 the entire shift he worked on the night in 18 question is incorrect. Rather he says: We 19 agreed to produce our client's cell phone 20 records for the time period in question 21 only. 22 All right. The time period in 23 question only would be the night of this</p>	<p>1 destination called. 2 When you see destination 3 called and a city, I believe that indicates 4 an outgoing call; and when there's an 5 incoming call, instead of a destination 6 city, it says incoming call. That's what I 7 believe this means. Other than contacting 8 the carrier and confirming that, I don't 9 know how the rest of the bill will help you. 10 MR. JOHNSON: Again, you 11 hadn't provided that to us, so I don't know. 12 It may not, I agree with you. But I can't 13 feel like I'm doing my job -- 14 MR. SPORT: Is that your 15 question, you want to know what's outgoing 16 and what's incoming? 17 MR. KILBORN: Let's go off the 18 Record and you and I will talk. Take a 19 break. 20 (Recess taken.) 21 (Whereupon, Defendant's 22 Exhibit No. 11 was marked 23 for identification.)</p>

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<p style="text-align: right;">Page 301</p> <p>1 Q. All right. Mr. Dees, we're 2 going back on the Record now, just so you 3 know. 4 Let me show you what I have 5 marked as Defendant's Exhibit 11. And I 6 know that you and your attorneys had an 7 opportunity to look at that just before we 8 got started; is that correct? 9 A. Yes, sir. We had just seen 10 the box before we got started? 11 Q. Right. 12 A. Yes, sir. 13 Q. And just for the Record, I 14 gave you a box of items; correct? 15 A. Yes, sir. 16 Q. And you reviewed the contents 17 of the box? 18 A. Yes, sir. 19 Q. And were the contents of the 20 box consistent with what's indicated on 21 Exhibit 11? 22 A. Yes, sir. But you got to take 23 into account, like I said, my locker was</p>	<p style="text-align: right;">Page 303</p> <p>1 that you mentioned earlier? 2 A. Yeah. I mean, I had Army pay 3 stubs in there, with my account number, 4 where my money is being sent, my social, all 5 my information pertaining to my Army -- my 6 account that my Army check goes into, and my 7 military service -- 8 Q. Did they get sent to you -- 9 A. -- notes. No, they didn't get 10 sent to me. The only thing I received since 11 I left was when you brought that box today. 12 I haven't received, I haven't heard from 13 them, nothing. 14 Q. Your Army pay stubs, were 15 those sent to you at Hyundai? Did you 16 receive your paycheck at Hyundai? 17 A. No, sir. I had it in my 18 pocket, and carried it in there, and forgot 19 it, took it out and put it in my locker. 20 Q. Is it one pay stub? 21 A. No. It's several. But like I 22 said, it had my savings account number, my 23 Social Security number, it had everything on</p>
<p style="text-align: right;">Page 302</p> <p>1 left unlocked for several months, then a 2 lock was placed on it, then a lock was taken 3 off, and then whoever -- one of y'all was 4 videoed taking the contents out of the 5 box -- 6 Q. Okay. 7 A. I mean, out of the locker. 8 Q. Okay. 9 A. I mean, there's no chain of 10 custody there. 11 Q. Okay. But I just want to make 12 sure that we're clear on the box of items 13 that was given to you today was consistent 14 with what's listed on that sheet? 15 A. You can have them back. 16 That's not my stuff on that box. The tools 17 belong to Hyundai. 18 Q. Now, let me ask you this. 19 With respect to the list of items there on 20 Exhibit Number 11, do you have any reason to 21 think at the time of your termination there 22 were other items in that locker, other than 23 the jacket that you got back and some notes</p>	<p style="text-align: right;">Page 304</p> <p>1 there. 2 Q. Your pay stubs have your 3 Social Security number on it and your 4 account number for your bank? 5 A. An Army pay stub, yes, sir, it 6 does. 7 Q. Do you have subsequent Army 8 pay stubs? 9 A. Yes, sir, somewhere. 10 Q. All right. The ones that you 11 do have, are they in the same format and 12 look just like the ones that were in your 13 locker on date of termination? 14 A. Yes, sir. It's got my rank, 15 my years of service, unit. 16 Q. And this is just a pay stub, 17 that's all we're talking about? 18 A. Yeah. There was a couple of 19 them. I mean I don't know. 20 Q. All right. 21 A. At the time, yeah, I left a 22 lot of stuff in there. That was back in 23 February. And y'all show up with stuff that</p>

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<p style="text-align: right;">Page 305</p> <p>1 don't even belong to me. That stuff there 2 belonged to Hyundai. You can carry it back 3 to them. My personal stuff, they left. 4 Prater went in, left my tool 5 bag, everything out there, everything in my 6 locker, and brought me that jacket with that 7 little MP3 player and my notes was missing 8 and everything is -- and this here, I can't 9 even read hardly. 10 Q. I'm trying to figure out what 11 else you had in your locker, other than 12 what's on that list, the MP3 player, the 13 notes, the pay stubs, and the jacket. Can 14 you think of anything? 15 A. No, sir. 16 Q. Was there anything else of 17 value in that locker? 18 A. I don't know. 19 Q. Okay. 20 A. I don't know. 21 Q. Now, how many Army pay stubs 22 would there have been? 23 A. There was two or three.</p>	<p style="text-align: right;">Page 307</p> <p>1 come with an actual check? 2 A. No, sir. 3 Q. And is it on a 4 eight-and-a-half-by-eleven, normal sheet of 5 paper size thing? 6 A. Yes, sir. 7 Q. And I assume, like regular pay 8 stubs, it shows, you know, what your gross 9 is, what they took out, what they withheld 10 for taxes, and that kind of stuff? 11 A. Yes, sir. 12 Q. Okay. Anything else you can 13 think of that was in your locker? 14 A. I don't know. I hadn't 15 thought about it today. 16 Q. All right. Well, have you 17 thought about it before today? 18 A. A while back, after I'd gotten 19 fired, yes, sir, I did. 20 Q. All right. Did you write down 21 what you thought was in your locker at that 22 point in time, take notes on it? 23 A. No, sir, I did not. I was</p>
<p style="text-align: right;">Page 306</p> <p>1 Q. Two or three? 2 A. Yes, sir. 3 Q. Okay. And do you know what 4 months they were for? 5 A. No, sir. 6 Q. Do you remember when you put 7 them in your locker? 8 A. No, sir. 9 Q. Do you remember how long they 10 were in your locker? 11 A. No, sir. 12 Q. Do you remember showing them 13 to anybody or talking to anybody about it? 14 A. No, sir. 15 Q. And when you say pay stubs, 16 are they literally pay stubs where you tear 17 the check off the bottom half? 18 A. No, sir. It's a computer 19 printout. 20 Q. Okay. It just shows what was 21 direct deposited into your account? 22 A. Yes, sir. 23 Q. Okay. So it doesn't actually</p>	<p style="text-align: right;">Page 308</p> <p>1 flustered, I was mad. 2 Q. Does being mad make you not 3 take notes? 4 A. No, sir. That didn't have 5 nothing to do with me not taking notes. 6 Q. Okay. 7 A. That had everything to do with 8 me being flustered and mad because I had 9 gotten fired for somebody recommending that 10 I be fired, off of a recommendation that he 11 had made. It's right there in your letter 12 that you had, that he recommended it. 13 Q. What are you talking about? 14 A. Prater. He recommended it. 15 Q. I know what you're talking 16 about. But you're referring to Prater? 17 A. Yeah. It said he recommended 18 it: Based on this conversation, I feel that 19 even if he were not sleeping, that he 20 doesn't care enough about his job to defend 21 anyone from thinking he was sleeping. John, 22 my recommendation is termination. 23 Q. What exhibit are you referring</p>

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<p>1 to?</p> <p>2 A. Number 6.</p> <p>3 (Whereupon, Defendant's</p> <p>4 Exhibit No. 12 was marked</p> <p>5 for identification.)</p> <p>6 Q. Okay. Let me show you what</p> <p>7 we've marked as Exhibit 12, and that's Dees</p> <p>8 versus HMMA number 6, deposition Exhibit 12.</p> <p>9 A. Where is 9? Or have I got</p> <p>10 them. I got them backwards. Hold on.</p> <p>11 Q. Do you recognize that</p> <p>12 document, Mr. Dees?</p> <p>13 A. I've never seen this document.</p> <p>14 Q. You've never seen that</p> <p>15 document?</p> <p>16 Is it your testimony you've</p> <p>17 never seen that?</p> <p>18 A. Not until -- I believe I saw</p> <p>19 it yesterday, but prior to that, no, I'd</p> <p>20 never seen this document.</p> <p>21 Q. You indicated that when you</p> <p>22 met with Wendy Warner and some others at the</p> <p>23 time of your termination, Wendy Warner had a</p>	<p>1 HMMA management in the third floor overhead</p> <p>2 sleeping. HMMA policy states, quote,</p> <p>3 serious and excessive violations of HMMA's</p> <p>4 performance standards, end quote, is a</p> <p>5 serious misconduct violation.</p> <p>6 I won't read the whole thing,</p> <p>7 but since you're looking at Exhibit 12, what</p> <p>8 you're reading there, is that consistent</p> <p>9 with what she read to you?</p> <p>10 A. I don't know. Like I said, I</p> <p>11 had been floored. The only thing I heard</p> <p>12 was sleeping and terminated immediately, and</p> <p>13 I couldn't believe it.</p> <p>14 Q. Okay.</p> <p>15 A. I mean, that was --</p> <p>16 Q. Do you -- Just so I can make</p> <p>17 sure that the Record is clear, what does</p> <p>18 cleaning the pit involve?</p> <p>19 A. Cleaning the pit involves</p> <p>20 picking all the scrap up around the</p> <p>21 conveyors that's fallen while the presses</p> <p>22 are running. And you have a -- It's very</p> <p>23 dangerous because you're doing it, you're</p>
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<p>1 piece of paper that as you testified,</p> <p>2 slammed it on the table?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Did you read that document?</p> <p>5 A. No, sir, I didn't read it.</p> <p>6 She read a document that she had in her hand</p> <p>7 that she was holding up at an angle that she</p> <p>8 could see. I was sitting across the table</p> <p>9 from her. She read the document, she</p> <p>10 finished it, placed it face down on the</p> <p>11 table like that (indicating).</p> <p>12 Q. Do you remember anything about</p> <p>13 what she read out loud to you?</p> <p>14 A. Just that I had been accused</p> <p>15 of sleeping and I was being terminated</p> <p>16 immediately.</p> <p>17 Q. All right. Was that on</p> <p>18 February 26th?</p> <p>19 A. That was it.</p> <p>20 Q. Do you remember if the letter</p> <p>21 said anything like this: Dear Leon, it has</p> <p>22 been brought to my attention on February</p> <p>23 14th, 2007, you were found by a member of</p>	<p>1 down there, you have no communication, if</p> <p>2 anything happens to you, you're there until</p> <p>3 someone decides to come looking for you.</p> <p>4 Q. Would you go there without</p> <p>5 telling somebody you're in it?</p> <p>6 A. I wouldn't go there unless</p> <p>7 told to go there.</p> <p>8 Q. Would the -- Are the -- You</p> <p>9 say the presses are running when you're down</p> <p>10 there?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And I want to make sure I</p> <p>13 understand. I mean, the presses aren't some</p> <p>14 giant thing that comes down and stamps where</p> <p>15 you're actually standing when you're</p> <p>16 cleaning out the pit, is it?</p> <p>17 A. No, sir. But the scraps are</p> <p>18 falling down where you're actually standing.</p> <p>19 I mean, it's falling onto a metal conveyor,</p> <p>20 but the reason you're having to go clean the</p> <p>21 pit is because it bounces out of that</p> <p>22 conveyor onto the floor. And you do -- you</p> <p>23 get stuck. You've got little protective</p>

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<p style="text-align: right;">Page 313</p> <p>1 gloves, but it only covers your forearms and 2 your hands, everything else is fair game. 3 Q. But what we're talking about 4 is picking up or removing, essentially, 5 debris from the stamping equipment that 6 comes off a conveyor belt? 7 A. No, sir. We're talking about 8 putting yourself in a hazardous situation 9 with scrap falling thirty foot into a chute, 10 bouncing off a metal conveyor, coming down 11 right beside your head, your back, your 12 neck, everything else that's exposed. And 13 the gloves you're wearing is only cut 14 resistant, not cut proof. 15 Q. Do you have any reason to 16 think that working in the pit is 17 unreasonably dangerous or inappropriate? 18 A. It's very dangerous. Like I 19 said, you got sharp steel coming down 20 through these chutes, sheet metal, some of 21 it is perfectly square corners, some of it 22 comes out to a razor point. And that's the 23 reason you're cleaning it, because it</p>	<p style="text-align: right;">Page 315</p> <p>1 Q. Did you ever see -- Do y'all 2 have a nurse or doctor on site at the plant? 3 A. Yes, sir. But you was 4 discouraged from going there. 5 Q. Did you ever get hurt and go 6 there? 7 A. No, sir, I never went there. 8 Q. Okay. 9 A. If I got a cut, I covered it 10 up and I drove home. 11 Q. Did you ever file any 12 complaints to anybody in management about 13 the pit? 14 A. Yes, sir, I did. Several 15 times. 16 Q. Who was that? 17 A. I went to HR and Applegate. 18 Q. Did you file any written 19 complaints? 20 A. No, sir. Like I said, they 21 didn't have a format or process for filing 22 written complaints. 23 Q. Okay. When you talked to</p>
<p style="text-align: right;">Page 314</p> <p>1 doesn't stay in the conveyor, it bounces out 2 all over the place. And if you get hit by 3 it, you get cut no matter what you're 4 wearing. 5 Q. To your knowledge, has anybody 6 been injured because of the pit? 7 A. Several people has been -- 8 Well, I believe somebody has. I don't 9 remember who it was. 10 Q. You don't recall? 11 A. No. 12 Q. Okay. 13 A. The metal is very sharp. 14 They've got numerous instances of people 15 getting cut by that metal. 16 Q. Is there -- Did you ever get 17 cut by the metal? 18 A. I got -- Yes, sir. Not bad 19 cuts where I had to have stitches, no. 20 Q. Did you file any sort of 21 worker's comp claim or report an injury or 22 anything like that? 23 A. No, sir.</p>	<p style="text-align: right;">Page 316</p> <p>1 Applegate, what did he say about the pit? 2 A. Like I said this morning, he 3 said it all pays the same, what's your 4 problem. 5 Q. Who did you talk to in HR 6 about the pit? 7 A. I believe it was Keisha. 8 Q. Keisha. And what did she say 9 about the pit? 10 A. She said she would get with 11 Applegate and Prater. The next thing I know 12 I'm going to talk to Applegate. 13 Q. Okay. Do you have any reason 14 to think you've been discriminated against 15 or harassed for any other protected 16 characteristic like sex, age, race? 17 A. Everything stems around my 18 military career, everything. Like I say, it 19 all started with harassment about my orders. 20 Everything had to do with my weekend drill, 21 all the way from Prater to HR. Every time 22 I'd go to them, the letter from my unit, the 23 e-mail, everything all the way to the</p>

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<p style="text-align: right;">Page 317</p> <p>1 recommendation for Prater saying I recommend 2 him for termination, everything stemmed 3 around my Guard duty. 4 Q. Okay. And so I'm assuming 5 that since you're saying everything stems 6 from your Guard duty, I'm assuming it would 7 be safe to rule out any other issues, like 8 age, race, sex, religion, anything like 9 that? 10 A. I reckon. 11 Q. You would agree? 12 A. I mean, I don't know what -- 13 Q. Let me ask you this -- 14 A. Like I said, everything come 15 from my Guard duty. As far as to my 16 knowledge, everything from the beginning 17 from when it started, to the end, to my 18 knowledge, seemed like it come from my Guard 19 duty and my commitment to the Guard. 20 Q. Let me ask you some pretty 21 simple questions. Were you terminated 22 because of your age? 23 A. Well, they say I was</p>	<p style="text-align: right;">Page 319</p> <p>1 just want to rule out that there's no other 2 lawsuits coming in the future related to 3 this. 4 MR. KILBORN: You're not. 5 That's guaranteed. 6 MR. JOHNSON: Okay. 7 Q. And when did you first start 8 taking notes about the harassment issues? 9 A. The very first time it 10 happened. 11 Q. The very first time? 12 A. Yes, sir. 13 Q. Okay. And did you ever show 14 your notes to any of your coworkers? 15 A. We went through this this 16 morning. 17 Q. That's right. Did you ever 18 show them to anybody in HR? 19 A. No, sir. 20 Q. And would it be fair to state 21 that -- 22 A. I never showed them to no one 23 in HR, but I made the complaints from my</p>
<p style="text-align: right;">Page 318</p> <p>1 terminated because I was sleeping. But, 2 like I say, that all started because of my 3 Guard duty. 4 Q. Are you saying you were 5 terminated because of your age? 6 A. I'm not saying anything. I'm 7 saying I was terminated because of my Guard 8 duty is what I'm saying. 9 Q. Were you discriminated against 10 because of your age? 11 A. Like I said before, I believe 12 I was terminated against because of my Guard 13 duty service. 14 Q. Were you discriminated against 15 because of your age? 16 A. I have no idea. 17 Q. Is that a yes or no, were you 18 or weren't you? 19 MR. KILBORN: Don't raise your 20 voice. We're not suing over any type of 21 discrimination other than the circumstances 22 that we sued over. 23 MR. JOHNSON: I agree. And I</p>	<p style="text-align: right;">Page 320</p> <p>1 notes to HR. When I went to HR, I discussed 2 what was on my notes. 3 Q. Okay. 4 A. Did I pull them out and show 5 them to them? No. 6 Q. Other than with respect to 7 your military service, how was your 8 relationship with Greg Prater? 9 A. He was my boss, I was the 10 employee. 11 Q. I mean, was he a good boss? 12 A. No. 13 Q. Why not? 14 A. I mean, well, you talked to my 15 coworkers. 16 Q. I'm talking to you now. 17 A. He has no supervisory skills. 18 Q. Okay. What makes you say 19 that? 20 A. His mismanagement of funds, 21 his mismanagement of time. 22 Q. Mismanagement of funds, how? 23 A. Not ordering parts, then when</p>

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<p style="text-align: right;">Page 321</p> <p>1 he ordered parts, he ordered too many of the 2 wrong thing and not having money to order 3 the right parts. 4 Q. Mismanagement of time, how is 5 that? 6 A. Scheduling people to come in 7 on the weekend to work and not having the 8 parts there to do the job. 9 Q. Did you have any problems with 10 Greg Prater because of that? Did you tell 11 him he was a bad manager? 12 A. No, sir. It wasn't my job. 13 Q. Did you ever suggest to him 14 that he wasn't a good manager? 15 A. No, sir. I was being paid to 16 do a job, and I did the job I was paid to 17 do. 18 Q. Did you ever indicate to him 19 that he didn't do his job well? 20 A. No, sir. 21 Q. Okay. 22 A. Several others did, but not 23 me.</p>	<p style="text-align: right;">Page 323</p> <p>1 Barnes got sent? 2 A. Yes, sir. That's why I had 3 Sergeant Barnes send the letter. That's why 4 I made a complaint to my unit, and Sergeant 5 Richberg made the recommendation. 6 Q. Okay. 7 A. Like I said earlier, the only 8 thing HR was concerned about was he told us 9 we couldn't talk to them. They could care 10 less whether his harassment about my Guard 11 service or not. 12 Q. All right. How was Greg 13 Prater viewed by your coworkers? 14 A. You'll have to ask them that. 15 Q. Well, did they ever say 16 anything to you about what they thought of 17 him? 18 A. Yeah. 19 Q. What did they say? 20 A. I don't remember specific 21 quotes. He wasn't very popular. 22 Q. Okay. Did he have specific 23 problems with anybody?</p>
<p style="text-align: right;">Page 322</p> <p>1 Q. Not you? You never did? 2 A. No, sir. 3 Q. Okay. Now, before the letter 4 was sent from Sergeant Barnes, back in 5 October — 6 A. Yes, sir. 7 Q. — did you have any problems 8 with Greg Prater? 9 A. That's the reason the letter 10 was sent. 11 Q. Okay. And prior to that time 12 in October, can you think — do you have any 13 idea how many times you had issues with Greg 14 Prater? 15 A. I don't know. 16 Q. Was it one instance and then 17 Sergeant Barnes — you had Sergeant Barnes 18 send that letter? 19 A. No, sir. If it had been one 20 incident, I wouldn't have sent it. I don't 21 hit the panic button for no reason. 22 Q. Had you gone to human 23 resources before the letter from Sergeant</p>	<p style="text-align: right;">Page 324</p> <p>1 A. You'll have to ask them that. 2 I can't testify as to their problems they 3 had with or without him. I don't know. 4 Q. Do you remember anything any 5 of your coworkers ever said about problems 6 they were having with Prater? 7 A. No, sir. 8 Q. Do you recall any of your 9 coworkers ever arguing with Prater in your 10 presence? 11 A. Well, that very first day we 12 went to HR, everybody was arguing with him. 13 Q. About what? 14 A. When he told us we couldn't go 15 to HR. And Chris Weihe jumped on him about 16 making fun of my military career and about 17 harassing me about my military career. 18 Q. What did Chris say? 19 A. I don't remember exact words. 20 I don't know. 21 Q. Were you there when he said 22 them? 23 A. Oh, yeah, we was there. The</p>

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<p style="text-align: right;">Page 325</p> <p>1 whole shift was there.</p> <p>2 Q. Do you remember approximately</p> <p>3 what Chris said?</p> <p>4 A. No. That was over a year ago.</p> <p>5 Q. Okay. Can you think of</p> <p>6 anybody other than Chris Weihe that might</p> <p>7 have said something to Prater about your</p> <p>8 military service?</p> <p>9 A. Some of the fellows on the</p> <p>10 other shift said they did, I don't know.</p> <p>11 Q. Do you know if Chris Weihe is</p> <p>12 still working at the plant?</p> <p>13 A. Yes, he is.</p> <p>14 Q. He hasn't been terminated for</p> <p>15 taking up for you or anything like that?</p> <p>16 A. No. Well, I take that back,</p> <p>17 Drake and -- Who is it? I think it was</p> <p>18 Drake and Hanks both said something to him.</p> <p>19 Q. To who?</p> <p>20 A. Prater.</p> <p>21 Q. Do you know what they said?</p> <p>22 A. No.</p> <p>23 Q. Were you there when they said</p>	<p style="text-align: right;">Page 327</p> <p>1 basically a ruse, a joke.</p> <p>2 Q. How did he say that?</p> <p>3 A. Y'all ain't nothing but a</p> <p>4 bunch of weekend wienie wannabe's, something</p> <p>5 of that nature. And all the time -- Like I</p> <p>6 said, you got a fellow sitting here saying</p> <p>7 he's been to Baghdad, talking about how many</p> <p>8 people he's killed and everything, and then</p> <p>9 all of a sudden you've been over there a</p> <p>10 couple times, you've done it, and sitting</p> <p>11 there and telling you you're a joke. I</p> <p>12 mean, as far as actual knock-down dragouts,</p> <p>13 no, I don't -- I can control myself better</p> <p>14 than that.</p> <p>15 Q. What about him? Did he ever</p> <p>16 yell at you?</p> <p>17 A. He yelled at everybody.</p> <p>18 Q. When you say yelled, did he</p> <p>19 literally raise his voice?</p> <p>20 A. Oh, yeah. When I say he</p> <p>21 yelled, yes, he yelled.</p> <p>22 Q. Did he ever yell at you about</p> <p>23 your military service?</p>
<p style="text-align: right;">Page 326</p> <p>1 it?</p> <p>2 A. Yeah. But that was -- that</p> <p>3 was -- that was a pretty good -- pretty big</p> <p>4 meeting. And I -- He had jumped on me</p> <p>5 pretty hard about my Guard duty that day.</p> <p>6 Q. How did he jump on you?</p> <p>7 A. Telling me that all we did was</p> <p>8 go down there and party, we didn't train.</p> <p>9 Q. Was it --</p> <p>10 A. All we was was a bunch of</p> <p>11 losers wanting to play army.</p> <p>12 Q. Was that the worst incident?</p> <p>13 A. Was that the worst incident?</p> <p>14 Probably not. That was probably the worst</p> <p>15 group incident.</p> <p>16 Q. Okay. What was the worst</p> <p>17 incident that the two of you had?</p> <p>18 A. I mean, we never -- I never</p> <p>19 got in a shouting match.</p> <p>20 Q. What is the worst thing he</p> <p>21 ever said to you?</p> <p>22 A. Like I said, basically telling</p> <p>23 me I wasn't -- that my military career was</p>	<p style="text-align: right;">Page 328</p> <p>1 A. Yeah.</p> <p>2 Q. What did -- How did he yell at</p> <p>3 you? What did he yell at you?</p> <p>4 A. You're going to bring me some</p> <p>5 military orders. And come in Monday:</p> <p>6 Where's my orders? If you don't bring them,</p> <p>7 you're going to get wrote up. You're going</p> <p>8 to get fired for your military service. You</p> <p>9 were supposed to be here this weekend.</p> <p>10 If you haven't talked to him,</p> <p>11 I'm sure you will, which I'm sure you have.</p> <p>12 Q. Anything else that he said?</p> <p>13 A. I don't remember. I mean, it</p> <p>14 was -- it was an ongoing event for several,</p> <p>15 several months.</p> <p>16 Q. But I need to make sure I know</p> <p>17 what he did.</p> <p>18 A. Okay. We've covered it.</p> <p>19 Q. All right.</p> <p>20 A. I'm telling you what he did.</p> <p>21 Like I said, you talk to my friends, you</p> <p>22 pretty much know.</p> <p>23 Q. Is there anything else that</p>

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1 **Greg Prater did or said that you felt was**
2 **harassing in any way?**

3 A. Yeah. Like I said -- Like I
4 started out this morning, my military
5 service became an issue, and it never went
6 away. It stayed an issue, it caused
7 problems. And I believe, to my utmost
8 ability, that that was the reason I'm fired
9 -- I was fired. I mean, everything points
10 -- everything falls back on my military
11 commitment, everything, from get-go to
12 finish.

13 I don't care what her letter
14 (indicating) says, even -- Like I said,
15 Prater's recommendation, even if he wasn't
16 sleeping, I recommend he be terminated.
17 Everything falls back to me not providing
18 something that I cannot provide for a drill,
19 for a weekend.

20 MR. KILBORN: For the Record,
21 you pointed to a Defendant's Exhibit 12.

22 THE WITNESS: Yes, sir.

23 MR. KILBORN: All right. I

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1 your cell phone was the question asked.

2 **Q. Okay.**

3 A. So they ignored -- They threw
4 their own policy out the window, as they did
5 with everything else, as they did with their
6 policy on the military leave. Prater
7 telling me he's going to make me use my
8 vacation time in lieu of my military leave.

9 **Q. They never did that, though?**

10 A. No, sir, he didn't.

11 **Q. Okay.**

12 A. But I didn't know that.

13 **Q. You called -- Why is it you**
14 **made the decision to call Mr. Moon after you**
15 **were terminated? Why Mr. Moon?**

16 A. He was the only person I knew
17 to call.

18 **Q. Why didn't you call Mr. Moon**
19 **and complain about Greg Prater when he was**
20 **allegedly harassing you?**

21 A. The Koreans -- Well, everybody
22 complained to Mr. Moon about Prater.

23 Mr. Moon knew how Prater was, that's what he

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1 just wanted the Record to be clear what you
2 pointed to.

3 **Q. Mr. Dees, was using the cell**
4 **phone for text messaging or other personal**
5 **purposes, a violation of Hyundai policy or**
6 **other policy?**

7 A. Well, you've got their policy
8 there somewhere, I know.

9 **Q. I'm asking you?**

10 A. Their policy states your cell
11 phone is to be kept in your locker and only
12 used on breaks and lunch breaks. And as I
13 stated earlier, Prater, Mr. Moon, Applegate
14 even called some of our team members on our
15 personal cell phones during breakdowns
16 wanting to know what was going on.

17 **Q. Okay.**

18 A. Their policy said one thing,
19 they enforced something else.

20 **Q. Okay.**

21 A. And that come from management,
22 all the way down. And if you didn't have
23 your cell phone, why didn't you call me on

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1 said.

2 **Q. Did you?**

3 A. Yeah, I complained to
4 Mr. Moon.

5 **Q. What did you tell Mr. Moon**
6 **about Prater before you were terminated?**

7 A. The exact comments, I have no
8 idea.

9 **Q. Did you tell him he's**
10 **harassing me because I go on Guard duty?**

11 A. Yes, I did. I told Mr. Moon
12 that I was being picked on by Greg Prater,
13 by Applegate, and HR. And he said, look, I
14 know Prater is a bad man. Give me time.

15 **Q. This was before you were**
16 **terminated?**

17 A. Yes. I wasn't the only one
18 that complained to him.

19 **Q. Okay.**

20 A. But as far as, like I said,
21 about my Guard duty, yes, I did. I didn't
22 know nobody else to call. Mr. Moon was the
23 only one I knew. He was the other

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<p style="text-align: right;">Page 333</p> <p>1 counterpart, the Korean counterpart, my 2 Korean boss in that shop, and I called him. 3 Q. What I'm trying to make sure I 4 understand, is in the sense that you called 5 him after you were terminated, did you call 6 him or have your wife call him during the 7 period in which you were allegedly harassed 8 to try to get him to stop Greg Prater? 9 A. No. I talked to him a few 10 times at work. But I didn't know I was 11 being terminated. How am I supposed to call 12 somebody if I don't know I'm being 13 terminated? 14 Q. Did you know you were being 15 harassed? 16 A. Yes. Why do you think I went 17 to HR. 18 Q. So you knew that but you 19 didn't go to Mr. Moon with that? 20 A. I told you earlier that I 21 complained to Mr. Moon about one time and he 22 said give me time. And Prater was -- He 23 knew Applegate. But apparently it didn't do</p>	<p style="text-align: right;">Page 335</p> <p>1 your termination? 2 A. I don't know. Like I said, 3 everything went back to that military 4 record. 5 Q. But again what did you know. 6 Do you have any reason to think that Mr. Ahn 7 knew about your situation? 8 A. Like I said, it all went back 9 to my military record. Apparently it had to 10 have come up somewhere along the line. 11 Q. Do you have any personal 12 knowledge as to what Mr. Ahn knew about it? 13 That's an easy question to answer. 14 A. I wasn't in the meeting. I 15 don't know what they discussed. All I 16 know -- 17 Q. So the answer is no? 18 MR. KILBORN: Hold on. Don't 19 interrupt him. 20 A. All I know is that it went 21 back -- it started with my military career, 22 my military commitment, and it stayed there. 23 Q. Would it be fair --</p>
<p style="text-align: right;">Page 334</p> <p>1 no good, they told him to leave it alone. 2 Q. Is that the only discussion 3 you had with Mr. Moon about the harassment? 4 A. Probably. Because the Koreans 5 don't like to discuss problems like that. 6 They think if they wait, they will just go 7 away; that's their custom. 8 Q. Do you have any reason to 9 think that Mr. Moon talked to President Ahn 10 about the situation? 11 A. Say again. 12 Q. Do you have any reason to 13 think that Mr. Moon spoke to President Ahn 14 about your situation? 15 A. Before I was fired? 16 Q. Before or after. 17 A. Well, he talked to either J.H. 18 Kim or Mr. Ahn, one, after I was fired. I 19 have no idea who he talked to before I was 20 fired. 21 Q. Do you have any reason to 22 think that President Ahn had anything to do 23 with your termination or even knew about</p>	<p style="text-align: right;">Page 336</p> <p>1 A. I wasn't in the meeting, I 2 don't know what they discussed. I just know 3 everything come from my military obligation. 4 Q. Would it be fair to state that 5 you, today, don't have knowledge of whether 6 President Ahn were involved or not involved? 7 Would that be a fair statement? 8 A. I'm going with my last 9 comment. 10 Q. Well, is that not a fair 11 statement or is it a fair statement? 12 A. Like I said, I wasn't in the 13 meeting. I have no idea what they said. 14 All I know is everything stemmed from my 15 military career and commitment. 16 Q. So you don't know what 17 involvement, if any, Mr. Ahn had; is that 18 true? 19 A. Like I said -- 20 MR. KILBORN: Object. You 21 asked him that four or five times. 22 MR. JOHNSON: He doesn't want 23 to answer the question though.</p>

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<p style="text-align: right;">Page 337</p> <p>1 MR. KILBORN: Hold on. I'm 2 going to get my objection in or we're going 3 to be here until the cows come home. You 4 asked him that four or five times, he's told 5 you what he knows about Mr. Ahn, he's told 6 you that Mr. Moon said that he was going to 7 Mr. Ahn or Mr. Kim. Now get on with your 8 next question. 9 MR. JOHNSON: What he hasn't 10 said is what he knows about whether or not 11 Mr. Ahn was involved. 12 MR. KILBORN: I think he's 13 told you what he knows. If you know 14 anything else, tell him about Mr. Ahn. 15 Q. Do you know anything else 16 about Mr. Ahn's involvement? 17 A. I've answered the question the 18 only way I know how to answer it, and that's 19 the answer I'm sticking with. 20 Q. Okay. So there's nothing else 21 you can tell me about Mr. Ahn's involvement 22 with your situation? 23 A. Like I said, I've answered to</p>	<p style="text-align: right;">Page 339</p> <p>1 there. 2 Q. Okay. You mentioned your 3 military pay stubs earlier. Did you get pay 4 stubs from Hyundai? 5 A. Yes, sir. 6 Q. And you do you remember what 7 company name was on the pay stub? 8 A. No, I do not. 9 Q. Okay. Do you remember if it 10 was Hyundai Motor Manufacturing Alabama? 11 A. I don't know. I don't 12 remember. I don't remember what was on the 13 pay stub. 14 I know -- I tell you what I do 15 know, I know that HMC owns everything, 16 because our Korean bosses worked for HMC, 17 and that's what their badges said, and 18 that's what they said, so HMC owned all of 19 us, and they told us that. 20 Q. Okay. Did you ever deal with 21 anybody from HMA? 22 A. I don't remember. I may have, 23 I may not have.</p>
<p style="text-align: right;">Page 338</p> <p>1 the best of my ability, and that's the 2 answer I'm sticking with. 3 Q. I'm sure that will be 4 satisfactory. 5 Who is the other gentleman, 6 Mr. Kim? 7 A. J.H. Kim. 8 Q. What do you know about 9 Mr. Kim's involvement? Tell me what you 10 know. 11 A. Same thing. 12 Q. So you don't have anything to 13 tell me? 14 A. No, sir. 15 Q. Do you have anything to tell 16 me about Jason Lee's involvement? 17 A. I have no knowledge of who 18 Jason Lee is. 19 Q. Okay. 20 A. All I know is that he called 21 my wife and interviewed her for a job. 22 Q. Okay. When did that happen? 23 A. I don't know. I was working</p>	<p style="text-align: right;">Page 340</p> <p>1 Q. But you don't recall if you 2 did or didn't? 3 A. No, sir. I mean, I know it 4 went HMC, HMA, and like I say, HMMA, and we 5 all fell under HMC; HMC owns all of it. 6 That's what we was told by the Koreans. 7 Q. Do you have any information to 8 suggest that anybody from HMA was involved 9 in your termination? 10 A. They own our company. 11 Q. Do you have any other 12 knowledge? 13 A. They own our company. HMC 14 owns all of us, we're all one big -- they 15 were all one big company. 16 Q. Do you have any information to 17 suggest that HMA was involved, other than in 18 the ownership, as you state? 19 A. Like I said, it was all one 20 company. 21 Q. Is there anything else you can 22 tell me about that? 23 A. It was all one company.</p>

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<p>1 Q. Okay. I'm going to take that 2 as a no. 3 A. It was all one company. It's 4 not a no, it was all one company. You talk 5 to the Koreans out there, and they will tell 6 you this is all one company. 7 Q. Who? Who says that? What 8 Koreans? 9 A. Any Korean. You go out there 10 and ask any one of them, and they will tell 11 you that HMC is sole owner and HMC controls 12 everything. 13 Q. They say HMC controls 14 everything? 15 A. HMC, HMC, HMA, it goes down 16 the chain. They run their companies like a 17 military organization in a chain of command. 18 And you've got HMC, HMA; HMC would be the 19 commandant, HMA would be your generals, and 20 HMMA would be your peons and your officers. 21 Q. Did any of them -- Well, do 22 you know any HMA employees? 23 A. I may have met some of them.</p>	<p>1 bill. And we've had some discussions with 2 your attorneys after the Record. 3 MR. JOHNSON: As I understand 4 it, Mr. Sport, correct me if I'm wrong. 5 Mr. Sport is going to provide to our court 6 reporter an additional copy of pages one 7 through seven of Exhibit 13 and we'll mark 8 that -- Can we have that marked as 14? 9 COURT REPORTER: Sure. 10 MR. JOHNSON: And just for the 11 Record, 14 will basically be this exactly 12 presumably less the fax transmittal 13 information. 14 MR. SPORT: Hopefully more 15 legible. 16 MR. JOHNSON: More legible 17 MR. SPORT: That's the goal. 18 (Whereupon, Defendant's 19 Exhibit No. 14 was marked 20 for identification.) 21 Q. Okay. Now, to the extent that 22 I can, Mr. Dees, I want to look through 23 Exhibit 13, since I haven't had a chance to</p>
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<p>1 We had people coming in from HMA all the 2 time, but I don't remember. I don't know. 3 We had people coming in from all. We had 4 people coming in from Kia that HMC owns. We 5 had people from everywhere. As far as 6 personally knowing them, I don't remember. 7 I may have met them, I may not have met 8 them. 9 Q. Okay. 10 MR. JOHNSON: Can we mark this 11 one? 12 MR. SPORT: Sure. 13 (Whereupon, Defendant's 14 Exhibit No. 13 was marked 15 for identification.) 16 Q. Mr. Dees, I'm going to mark as 17 Exhibit 13, which is a seven-page document 18 which appears to be your cell phone record. 19 Can you just take a look at it and confirm 20 that that's what it is? 21 (Recess taken.) 22 Q. Okay. Mr. Dees, we've got 23 marked as Exhibit 13 the seven-page phone</p>	<p>1 look at it yet, and then possibly ask some 2 questions. 3 I assume Nikki is one of your 4 daughters? 5 A. Yeah. 6 Q. And are there only two phones 7 on this plan? 8 A. Is that the only two plans on 9 that for phone? 10 MR. KILBORN: You have to 11 answer the question. This is your 12 deposition. 13 A. I can't -- I don't pay the 14 bills, I just work. 15 Q. Okay. And, Mr. Dees, this 16 question is as much for your attorneys as it 17 is for you. I'm looking at page five of 18 this bill, and it looks like some of the 19 incoming calls don't have a number 20 associated with it. 21 MR. SPORT: They have not been 22 redacted, if that's your question. 23 A. I didn't say I had a good</p>

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<p style="text-align: right;">Page 345</p> <p>1 provider, I just said I had a provider. 2 MR. JOHNSON: And who -- You 3 know, I know that it's been redacted from 4 this, but I don't see any issues asking who 5 his provider is, is that something y'all are 6 opposed to him answering, subject to the 7 protective order? 8 MR. KILBORN: I'll let him 9 answer who his provider is. But outside of 10 what you've got there, you hadn't asked for 11 it and we're going to object to any further 12 request. But as I further stated, I'll 13 discuss with you sharing documents as we 14 talked about earlier. 15 MR. JOHNSON: Okay. I'm not 16 sure I understand. But I understand you'll 17 let him tell me who his cell phone provider 18 is. 19 MR. KILBORN: Well, no, let me 20 make that clear. We've asked a simple 21 request to look at the plant and photograph 22 it, that's what I'm talking about. In other 23 words, what I'm talking about is, I like</p>	<p style="text-align: right;">Page 347</p> <p>1 MR. KILBORN: I just told you, 2 I'd let him testify who his provider was. 3 But I'm just asking for accommodation, and I 4 want it on the Record, you said you didn't 5 know what I was talking about and I wanted 6 to make clear what I was talking about. 7 Q. Mr. Dees, who is your cell 8 phone provider? 9 A. Unicel. 10 Q. And was Unicel your provider 11 back in 2007? 12 A. Yes, sir. 13 Q. And how do you spell Unicel? 14 A. U-N-I-C-E-L. 15 Q. Just one L? 16 A. Yes. 17 Q. And, Mr. Dees, are you 18 familiar with anywhere in this invoice where 19 it talks about you having text messaging 20 capacity or how much you were charged for 21 text messages? 22 A. Like I said, I just work. I 23 don't pay the bills.</p>
<p style="text-align: right;">Page 346</p> <p>1 free discovery, and I'll do that with you, 2 even though you haven't asked about it. 3 MR. JOHNSON: I think we did 4 ask for -- 5 MR. KILBORN: But you guys 6 pulling these technicalities, so don't be 7 asking us for accommodations unless you're 8 willing to also give us accommodations. 9 MR. JOHNSON: Well, let me say 10 this, Mr. Kilborn, I believe and if 11 necessary I can go back and dig through the 12 file and find it, I think we asked for all 13 of his cellular telephone records. And we 14 were told we couldn't have them, I didn't 15 complain about that. I thought Mr. Sport 16 and I had reached some agreement on that, 17 which was fine with me. But my 18 understanding was that I would at least know 19 who the provider was. And I don't see why 20 that's a problem. 21 If I need to go back and 22 search for what we did in fact, ask for 23 months and months ago, I can do it.</p>	<p style="text-align: right;">Page 348</p> <p>1 Q. Okay. 2 A. I don't -- 3 Q. So, you never look at the cell 4 phone bills? 5 A. No. 6 Q. Okay. Have you ever looked at 7 this one before today? 8 A. I may have. I don't know. 9 Q. You don't recall? 10 A. No. 11 Q. Mr. Dees, did you have a 12 chance to look at the report that Mr. Hall, 13 who is here with us today, prepared? 14 A. Yes, sir. 15 Q. Okay. And when did you review 16 it? 17 A. I reviewed it yesterday with 18 Mr. Hall, like I said this morning. 19 Q. Okay. And in reviewing it 20 with Mr. Hall, did y'all do a page-by-page 21 analysis of it, or what did you do? 22 A. Somewhat. Not really. I'm 23 not an accountant or a lawyer, I don't know.</p>

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<p style="text-align: right;">Page 349</p> <p>1 Q. Okay. And was there anything</p> <p>2 in Mr. Hall's report that you didn't agree</p> <p>3 with?</p> <p>4 MR. KILBORN: Asked and</p> <p>5 answered.</p> <p>6 MR. JOHNSON: Did I cover</p> <p>7 that?</p> <p>8 Q. I know you indicated that you</p> <p>9 filed a complaint with the ESGR. Did you</p> <p>10 file a complaint with any other governmental</p> <p>11 agencies?</p> <p>12 A. No, sir.</p> <p>13 Q. Did you ever go to the EEOC to</p> <p>14 try to file a claim there?</p> <p>15 A. No.</p> <p>16 Q. Did you talk to any other</p> <p>17 governmental entities about possibly filing</p> <p>18 a claim?</p> <p>19 A. Not after I talked to ESGR, I</p> <p>20 felt it was a waste of time.</p> <p>21 Q. Did you ever call the</p> <p>22 Department of Labor?</p> <p>23 A. No. I told you, I had to go</p>	<p style="text-align: right;">Page 351</p> <p>1 can't ask who he talked to on a break.</p> <p>2 MR. JOHNSON: Why not? He's</p> <p>3 not supposed to talk to people on a break</p> <p>4 about the substance of his testimony.</p> <p>5 MR. KILBORN: He can talk to</p> <p>6 his lawyers all he wants.</p> <p>7 MR. JOHNSON: About the</p> <p>8 substance of his testimony?</p> <p>9 MR. KILBORN: He can talk to</p> <p>10 his lawyer about anything he wants to.</p> <p>11 MR. JOHNSON: In Alabama state</p> <p>12 court maybe. Do you think that will fly in</p> <p>13 Federal Court?</p> <p>14 MR. KILBORN: I certainly do.</p> <p>15 A. Look, I'm the type person,</p> <p>16 when I read something over and over again,</p> <p>17 the more I think about it, the more it jars</p> <p>18 my memory.</p> <p>19 Q. Are you telling me you didn't</p> <p>20 talk to anybody else about the substance of</p> <p>21 your testimony on that point?</p> <p>22 A. You asked a question earlier,</p> <p>23 I gave you an answer.</p>
<p style="text-align: right;">Page 350</p> <p>1 back to work. I didn't have time for --</p> <p>2 Q. Okay.</p> <p>3 MR. JOHNSON: We'll take a</p> <p>4 short break, talk with Mr. Smith, and we may</p> <p>5 be done.</p> <p>6 A. All right. A while ago, when</p> <p>7 you asked me did I call that Monday morning,</p> <p>8 I'd forgotten but yes, I called. I kept</p> <p>9 getting an answering machine, I got</p> <p>10 frustrated, call my wife, asked her to call.</p> <p>11 She wouldn't call because she didn't know</p> <p>12 what to say. And I don't know whether I</p> <p>13 ever left a message that I was trying to</p> <p>14 call and reschedule.</p> <p>15 Q. All right. What Monday</p> <p>16 morning are you talking about?</p> <p>17 A. That Monday morning, that peer</p> <p>18 review process.</p> <p>19 Q. All right. Let me ask you</p> <p>20 this. Did you talk to somebody on a break</p> <p>21 about your prior answer?</p> <p>22 A. No, I --</p> <p>23 MR. KILBORN: Hold on. You</p>	<p style="text-align: right;">Page 352</p> <p>1 Q. I know. Now you've got a</p> <p>2 different answer.</p> <p>3 A. Yes. And I told you that I</p> <p>4 did call them that morning. And I kept</p> <p>5 getting the answering machine, I told you</p> <p>6 what happened, I got frustrated. Called my</p> <p>7 wife, I asked her to try and call. And she</p> <p>8 wouldn't call because she didn't know what</p> <p>9 to say. So I tried to call back. I don't</p> <p>10 remember whether I left a message or not,</p> <p>11 but I know I was trying to call and</p> <p>12 reschedule.</p> <p>13 Q. Let me ask you this, did you</p> <p>14 talk to your wife about that on the break?</p> <p>15 A. You asked -- I told you what</p> <p>16 I'd done. I mean, you asked a question</p> <p>17 earlier, I answered it, and I had answered</p> <p>18 the question wrong.</p> <p>19 Q. Okay.</p> <p>20 A. What the question was, did I</p> <p>21 attempt to call anyone that day to</p> <p>22 reschedule, did I attempt to go, did I</p> <p>23 attempt to talk to anyone, did I attempt to</p>

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<p>1 write anyone, and I had said no. And I 2 forgot, I did try to call that morning. And 3 I had -- I kept getting an answering 4 machine. 5 Q. All right. And you agree 6 that's not what you testified to earlier 7 today? 8 A. That's not what I testified to 9 earlier today, no. 10 Q. All right. Did any particular 11 thing spur you to change your testimony in 12 that regard? 13 A. Well -- 14 Q. Did you talk to your wife 15 about what you said earlier? 16 A. I told you, I forgot and I 17 answered the question wrong. 18 Q. Okay. Did you talk to your 19 wife about your testimony? 20 A. I told you, that was my 21 answer. I gave you my answer. 22 Q. I'm asking you a specific 23 question.</p>	<p>1 what spurred you -- 2 A. But I gave you the answer, 3 like I said. 4 Q. Did you talk to your wife 5 about your testimony here today? 6 A. No, sir. I'm telling you that 7 that was my answer, period, plain and 8 simple. 9 Q. And you did not talk to your 10 wife about it? That's your sworn testimony? 11 A. She's got wrote down what I 12 said. 13 Q. I'm asking a simple question, 14 yes or no. 15 A. I gave you an answer to your 16 question. 17 Q. Did you talk to your wife? 18 A. I gave you an answer to your 19 question, sir. 20 Q. That didn't sound like an 21 answer to me and I -- 22 A. You asked me earlier today had 23 I tried to get in contact with anybody, and</p>
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<p>1 A. And I answered your question. 2 I said I forgot what I had done. 3 Q. And are you also -- 4 A. And I answered the question. 5 I stated that I had called. I have 6 forgotten that I had called. 7 Q. I heard you. 8 A. I also stated that I got an 9 answering machine several times. I also 10 stated that I got frustrated; that I called 11 my wife; that I had asked my wife to call; 12 my wife would not call. Therefore, I don't 13 know if I left a message or not. I was 14 upset, and I was working to make money. 15 That's my answer. 16 Q. And I understand that's your 17 answer now -- 18 A. Yes, sir. 19 Q. -- but that wasn't your answer 20 earlier -- 21 A. No, sir, that was not my 22 answer earlier. 23 Q. -- I'm trying to figure out</p>	<p>1 I answered no. 2 Q. You did answer no. 3 A. You acknowledge I answered no. 4 That was my answer. 5 Q. Your testimony earlier today 6 is different than your testimony right now; 7 correct? 8 A. You don't make mistakes? 9 Q. I make mistakes. 10 A. So do I, I'm human. I don't 11 know nobody that don't make mistakes. 12 Q. Let me ask some questions 13 here. And I'd like some answers from you. 14 I mean, we've got several hours we can be 15 here or we can go home. 16 A. I can stay awake. 17 Q. That's what you say. 18 A. That's what I know. 19 Q. Now let me ask the question: 20 Your testimony was different this morning 21 than it is now. And if it just suddenly 22 struck you for no apparent reason, that's 23 fine.</p>

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<p>1 A. You've never had that happen?</p> <p>2 Q. I have had it happen. Is that</p> <p>3 what happened to you?</p> <p>4 A. What's so strange about it?</p> <p>5 Q. Is that what happened to you?</p> <p>6 A. What's so strange about it?</p> <p>7 Q. Is that what happened to you?</p> <p>8 A. I told you.</p> <p>9 Q. No.</p> <p>10 A. I answered the question wrong</p> <p>11 earlier today, and that's my answer.</p> <p>12 Q. I know you said you changed</p> <p>13 your testimony, that's obvious from what</p> <p>14 you're saying.</p> <p>15 A. Yes, I did.</p> <p>16 Q. That's obvious from what</p> <p>17 you're saying.</p> <p>18 A. Yes.</p> <p>19 Q. What I'm asking you is, what</p> <p>20 made it change? Were you just suddenly</p> <p>21 struck by a different thought or did you</p> <p>22 talk to somebody that made you change your</p> <p>23 testimony?</p>	<p>1 MR. JOHNSON: Back on the</p> <p>2 Record.</p> <p>3 Q. Mr. Dees, before we took a</p> <p>4 break, I had started asking you some</p> <p>5 questions --</p> <p>6 A. Yes, sir.</p> <p>7 Q. -- because you testified to</p> <p>8 one thing earlier today, and moments ago,</p> <p>9 just before the break, you testified</p> <p>10 something different.</p> <p>11 A. Yes, I did.</p> <p>12 Q. And, again, that's okay with</p> <p>13 me. I just want to know why. And if your</p> <p>14 testimony is that you just remembered, then</p> <p>15 I'd like to know that. But if the truth is</p> <p>16 that you talked to your wife, and she jogged</p> <p>17 your memory, and you now know more, I want</p> <p>18 to know that.</p> <p>19 A. She told me that I -- She told</p> <p>20 me that I had called them. I forgot about</p> <p>21 it. Because she told me I called her saying</p> <p>22 I was frustrated. When she said that, I</p> <p>23 remembered, yeah, I called them several</p>
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<p>1 A. I answered the question.</p> <p>2 Q. You did not answer that</p> <p>3 question.</p> <p>4 A. That's my testimony I'm</p> <p>5 sticking with, period.</p> <p>6 Q. I'm going to get an answer.</p> <p>7 A. We've got a couple more hours.</p> <p>8 Q. And we can go now or we can go</p> <p>9 then. But I want an answer to the question.</p> <p>10 A. Okay. Ask your question.</p> <p>11 Q. Did you talk to your wife or</p> <p>12 anybody else and that made you change your</p> <p>13 testimony?</p> <p>14 A. I told you -- Well, she's got</p> <p>15 what I told you, that's what I'm sticking</p> <p>16 with.</p> <p>17 Q. Did you talk to your wife</p> <p>18 about substance of your testimony during</p> <p>19 this deposition?</p> <p>20 A. She's through typing now.</p> <p>21 MR. KILBORN: Let's take a</p> <p>22 break.</p> <p>23 (Recess taken.)</p>	<p>1 times.</p> <p>2 Q. Okay. So now you remember</p> <p>3 calling them?</p> <p>4 A. Yes, sir, I did. And I got</p> <p>5 mad because I kept getting that stinking</p> <p>6 answering machine.</p> <p>7 Q. Okay. See, that wasn't too</p> <p>8 hard, was it?</p> <p>9 A. Well, this is all new to me.</p> <p>10 I'm a soldier. I go fight where I'm told to</p> <p>11 fight and jump on who I'm told to.</p> <p>12 Q. This is where we fight.</p> <p>13 A. That's what y'all get paid</p> <p>14 for. This ain't my environment.</p> <p>15 Q. All right. There wasn't any</p> <p>16 magic to that, I just wanted to know the</p> <p>17 answer to the question. Okay?</p> <p>18 A. Well . . .</p> <p>19 Q. Have you ever appeared in</p> <p>20 court before?</p> <p>21 A. Just when I filed bankruptcy.</p> <p>22 Q. Okay. Did you give a</p> <p>23 deposition?</p>

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<p style="text-align: right;">Page 361</p> <p>1 A. No, sir.</p> <p>2 Q. Have you ever given a</p> <p>3 deposition like this today?</p> <p>4 A. Nope.</p> <p>5 MR. SPORT: You have now.</p> <p>6 THE WITNESS: Yeah. I don't</p> <p>7 like these at all.</p> <p>8 Q. When you filed bankruptcy, did</p> <p>9 you actually have to go to bankruptcy court?</p> <p>10 A. Yes, I did. It was quite</p> <p>11 embarrassing.</p> <p>12 Q. Now, Mr. Dees, before we get</p> <p>13 -- I basically get one shot at asking you</p> <p>14 questions.</p> <p>15 A. All right.</p> <p>16 Q. And I don't want to leave here</p> <p>17 thinking I didn't ask you something or I</p> <p>18 didn't get a fair answer from you.</p> <p>19 Are there any other questions</p> <p>20 that I've asked you today that you've</p> <p>21 already answered that you feel like you need</p> <p>22 to change or add to or take from?</p> <p>23 A. I'm still uncertain as to what</p>	<p style="text-align: right;">Page 363</p> <p>1 had with Mr. Prater or how do you know that?</p> <p>2 A. That stemmed -- That caused</p> <p>3 all of my problems from when we started to</p> <p>4 finish.</p> <p>5 MR. JOHNSON: As I said</p> <p>6 earlier, I'm going to take a quick break and</p> <p>7 talk with Mr. Smith. And assuming he hasn't</p> <p>8 thought of anything else, we'll probably be</p> <p>9 done. So give me just a few minutes, and</p> <p>10 we'll be right back.</p> <p>11 (Recess taken.)</p> <p>12 Q. Mr. Dees, I know that your</p> <p>13 attorneys had early on in the case provided</p> <p>14 something called Plaintiff's Initial</p> <p>15 Disclosures. It included a list of</p> <p>16 witnesses and people that know something</p> <p>17 about the case.</p> <p>18 And I want to ask -- I want to</p> <p>19 read off some of the names and ask you to</p> <p>20 let me know if there is anybody else that</p> <p>21 you're familiar with that might have</p> <p>22 information that's not included here.</p> <p>23 MR. SPORT: Matt, before he</p>
<p style="text-align: right;">Page 362</p> <p>1 you was wanting when you were asking about</p> <p>2 my knowledge of a meeting and whatever. You</p> <p>3 kept asking the question, and I still don't</p> <p>4 -- I'm still unsure of what you was hinting</p> <p>5 at.</p> <p>6 Q. Okay. What --</p> <p>7 A. Like I said, all I know is</p> <p>8 everything stemmed from my military</p> <p>9 service --</p> <p>10 Q. And that's all you know?</p> <p>11 A. -- and my military commitment.</p> <p>12 I don't care what was said in the meeting, I</p> <p>13 wasn't in the meeting. All I know is</p> <p>14 everything when my military commitment</p> <p>15 became a problem, it escalated to a point</p> <p>16 and it got me terminated because of my</p> <p>17 military commitment.</p> <p>18 I didn't even know they had</p> <p>19 had a meeting. But I know -- do know that</p> <p>20 my military career was the reason for my</p> <p>21 being terminated.</p> <p>22 Q. All right. And you know that</p> <p>23 just because that's the only problems you</p>	<p style="text-align: right;">Page 364</p> <p>1 starts on that, do you also have the</p> <p>2 supplement?</p> <p>3 MR. JOHNSON: Yeah. I think</p> <p>4 so.</p> <p>5 MR. SPORT: We added some</p> <p>6 names.</p> <p>7 MR. JOHNSON: Okay. Well, let</p> <p>8 me make sure. Did you add names on the</p> <p>9 supplement? I know you provided those tax</p> <p>10 documents.</p> <p>11 MR. SPORT: Yeah. I think we</p> <p>12 added a couple of names, four, five, six,</p> <p>13 seven, something like that.</p> <p>14 MR. JOHNSON: You don't happen</p> <p>15 to have them, do you?</p> <p>16 MR. SPORT: I don't. But go</p> <p>17 ahead and ask him, and the documents will</p> <p>18 say what they say.</p> <p>19 MR. JOHNSON: Yeah. Sure.</p> <p>20 Q. All right. Well, anyways,</p> <p>21 Mr. Dees, I realize that there might be</p> <p>22 additional names on a supplemental</p> <p>23 disclosure, and if they're there, I'll look</p>

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<p>1 at it and see what they are.</p> <p>2 But for purposes of the</p> <p>3 deposition, let me just refer to the Initial</p> <p>4 Disclosures that were provided. And they've</p> <p>5 indicated a number of names that have come</p> <p>6 up plenty of times: Your name, your wife's</p> <p>7 name, Greg Prater's name, Kevin Hughes, John</p> <p>8 Applegate. They list here Keisha Morris, is</p> <p>9 that the Keisha you're referring to?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. Mr. Moon is included,</p> <p>12 Wendy Warner is included. It's identified</p> <p>13 Drake Barefoot, he was a coworker of yours;</p> <p>14 is that right?</p> <p>15 A. That's right.</p> <p>16 Q. Okay. And we've talked about</p> <p>17 him some. Mark Bornberg, was he also your</p> <p>18 coworker?</p> <p>19 A. Yes.</p> <p>20 Q. And we've talked about him</p> <p>21 some?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And Chris -- W-E-I-H-E?</p>	<p>1 A. Yeah.</p> <p>2 Q. Okay.</p> <p>3 A. No. He came to work -- I</p> <p>4 don't know when he started with the company.</p> <p>5 Plus he started out on that weekend shift</p> <p>6 and then he moved to our shift.</p> <p>7 Q. Okay. What about Chris Weihe,</p> <p>8 was he --</p> <p>9 A. Chris was one of the very</p> <p>10 first ones hired on.</p> <p>11 Q. Was he at that meeting?</p> <p>12 A. Yes.</p> <p>13 Q. And was Mark Bornberg at that</p> <p>14 meeting?</p> <p>15 A. I don't know if Bornberg was</p> <p>16 or not.</p> <p>17 Q. Okay. And was Drake Barefoot</p> <p>18 at the meeting?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And also included here</p> <p>21 is a guy we haven't talked about, John</p> <p>22 Wingo?</p> <p>23 A. Yes. Wingo was there too.</p>
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<p>1 A. Weihe.</p> <p>2 Q. And we talked about him some.</p> <p>3 I think we also talked about Shane Archer</p> <p>4 who worked with you as well?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Is that a yes?</p> <p>7 A. Yes.</p> <p>8 Q. And I think you mentioned Mark</p> <p>9 Hanks' name, but I didn't get a good feel</p> <p>10 for what you understood Mark Hanks to know.</p> <p>11 Tell me what -- I know we talked about the</p> <p>12 big meeting where you and a number of your</p> <p>13 coworkers were there, you talked with</p> <p>14 Prater, and that was sort of a big deal</p> <p>15 meeting that we talked about. Was Mark</p> <p>16 Hanks there?</p> <p>17 A. Yes.</p> <p>18 Q. And was Shane Archer there?</p> <p>19 A. Yes. Well, wait a minute.</p> <p>20 The first meeting? I don't know if Shane</p> <p>21 was there or not.</p> <p>22 Q. Did he start later than some</p> <p>23 of the other guys?</p>	<p>1 Q. Who is John Wingo?</p> <p>2 A. He worked at International</p> <p>3 Paper with me, came down to Hyundai with me.</p> <p>4 And I'd known him several years, and he left</p> <p>5 and went to Honda.</p> <p>6 Q. Okay. When did he do that?</p> <p>7 A. I don't know.</p> <p>8 Q. I mean, did he leave before</p> <p>9 your termination, or since then?</p> <p>10 A. Before I was fired, yes.</p> <p>11 Q. Okay. And what did John Wingo</p> <p>12 know?</p> <p>13 A. He was there for most of the</p> <p>14 harassment, most of the time I was being</p> <p>15 pushed and harassed.</p> <p>16 Q. All right. Did you ever have</p> <p>17 any conversations with John Wingo about it?</p> <p>18 A. Yes, sir. Me and John were</p> <p>19 tight. He was a former Marine. Me and him</p> <p>20 had a good military bond.</p> <p>21 Q. You use the word pushed and</p> <p>22 harassed, were you actually physically</p> <p>23 pushed or were you just talking mentally</p>

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<p style="text-align: right;">Page 369</p> <p>1 pushed?</p> <p>2 A. I was actually physically</p> <p>3 grabbed, yes.</p> <p>4 Q. When?</p> <p>5 A. By Prater.</p> <p>6 Q. When?</p> <p>7 A. Before a shift one time. He</p> <p>8 come in and somebody stated, I got a</p> <p>9 headache, and he said: Yeah, so do I, and</p> <p>10 pointed at me. And, I don't know, several</p> <p>11 minutes later came up and tried to bear hug</p> <p>12 me from behind. And I don't even remember</p> <p>13 what the comment was that he made.</p> <p>14 Q. You don't remember?</p> <p>15 A. No, sir.</p> <p>16 Q. I mean, was he just goofing</p> <p>17 around, or what was the point of the bear</p> <p>18 hug?</p> <p>19 A. He -- It was -- Dadgumit. No,</p> <p>20 I mean, it wasn't goofing. I didn't --</p> <p>21 There was nothing goofing around. I didn't</p> <p>22 goof around with him, with management. I</p> <p>23 don't -- I don't remember.</p>	<p style="text-align: right;">Page 371</p> <p>1 under the bridge because he was management.</p> <p>2 Q. Okay.</p> <p>3 A. He cussed two of our</p> <p>4 specialists out, they went to team</p> <p>5 relations, went to HR, same thing, washed</p> <p>6 under the bridge because he was management.</p> <p>7 Q. All right. With respect to</p> <p>8 these guys that are your coworkers, Drake</p> <p>9 Barefoot, Mark Bornberg, Chris Weihe, Shane</p> <p>10 Archer, Mark Hanks, or John Wingo, can you</p> <p>11 think of any other discussions you had with</p> <p>12 them about Prater or your problems because</p> <p>13 of your military service that we haven't</p> <p>14 talked about already?</p> <p>15 A. There probably is, but right</p> <p>16 offhand, no, I don't remember. Plus there</p> <p>17 was Sergeant First Class Richberg and</p> <p>18 Sergeant Martin in my unit.</p> <p>19 Q. Wait. Say that again.</p> <p>20 A. You have Sergeant First Class</p> <p>21 Richberg and Sergeant Martin you need to add</p> <p>22 to your list.</p> <p>23 Q. Who is Richberg? I think you</p>
<p style="text-align: right;">Page 370</p> <p>1 Q. I mean, did you think he was</p> <p>2 trying to physically attack you?</p> <p>3 A. No. Because then that would</p> <p>4 -- I mean, I don't know what he was trying</p> <p>5 to do. He come up and grabbed me from</p> <p>6 behind. And I don't remember what the</p> <p>7 comment was that was made, but it was there</p> <p>8 in the shift office. Bill Seivers' shift</p> <p>9 saw it, my shift saw it. I busted loose,</p> <p>10 grabbed my tools, and walked out.</p> <p>11 Q. Okay.</p> <p>12 A. I don't remember what it was</p> <p>13 for. I don't remember what he said. I was</p> <p>14 -- I don't know.</p> <p>15 Q. Did y'all have any other</p> <p>16 discussion about it?</p> <p>17 A. No. I mean, some of the other</p> <p>18 fellows voiced their opinions.</p> <p>19 Q. What did they say?</p> <p>20 A. Just like every other thing --</p> <p>21 I don't know, I wasn't in there. I left.</p> <p>22 They voiced their opinion, like I said, it</p> <p>23 was like everything else, it was washed</p>	<p style="text-align: right;">Page 372</p> <p>1 mentioned his name earlier.</p> <p>2 A. He was my superior. He</p> <p>3 retired.</p> <p>4 MR. SPORT: I'll represent to</p> <p>5 you, I think those are two of the names we</p> <p>6 added in our supplement.</p> <p>7 MR. JOHNSON: I think you're</p> <p>8 right. Now I remember it.</p> <p>9 Q. Martin is somebody we talked</p> <p>10 about earlier?</p> <p>11 A. Martin, he took Sergeant First</p> <p>12 Class Richberg's place in our unit. I've</p> <p>13 known him for about ten years.</p> <p>14 Q. Barring anybody that may be in</p> <p>15 a supplemental disclosure that your</p> <p>16 attorneys have provided to us, and I'm sorry</p> <p>17 I can't hand them to you to look at, can you</p> <p>18 think of any other people that would have</p> <p>19 knowledge about your case or the allegations</p> <p>20 that you've made?</p> <p>21 A. You need to talk to some of</p> <p>22 the production people there, if you haven't</p> <p>23 already. I mean, they -- I don't know.</p>

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<p style="text-align: right;">Page 373</p> <p>1 Q. Is there anybody that knows 2 anything about it that we should talk to? 3 A. Right offhand -- 4 MR. SPORT: I don't think we 5 had listed one of the names he had mentioned 6 today. The guy's name ends in a Y, works in 7 production. 8 MR. JOHNSON: Stapley. 9 MR. SPORT: Stapley. I don't 10 think we've listed him, but we probably need 11 to supplement him. 12 Q. Mr. Dees, sort of my last 13 question here, I know -- your attorneys have 14 provided me a lot of documents, and I'm 15 assuming they all came from you. Are you 16 aware of any documents related to this case, 17 issues you had with Hyundai, issues you've 18 had with Greg Prater individually, or 19 anybody else that might relate to this case 20 that you haven't provided to your lawyers? 21 Is there any other 22 correspondence, any other e-mails, notes, or 23 anything?</p>	<p style="text-align: right;">Page 375</p> <p>1 not. 2 Q. Were there video recording 3 devices when you come into the security 4 building when you were fired? 5 A. Yes, sir. They have a room in 6 there, when you walk in the door, there's a 7 door straight across from the entry door, 8 and that room is all their recording 9 devices, I believe. That's where I saw 10 them. 11 Q. You saw them there? 12 A. Yes, sir. 13 Q. Okay. And what about the 14 plant, does it have any recording devices? 15 A. Yes, sir. 16 Q. Where are they? 17 A. Specifics, I don't know. I 18 know we had a coax running up in our 19 building in the production building, because 20 Prater would brag that he would go back 21 there and disconnect the coax to their 22 cameras in our section and then they would 23 call him and ask him what was wrong with it.</p>
<p style="text-align: right;">Page 374</p> <p>1 A. I don't -- Not offhand. But 2 like the e-mail from -- that I sent to 3 Kimball, I'd forgotten about it until today. 4 I mean, if I remember it, they'll know about 5 it. But as of right now, no. 6 Q. Okay. So as of right now, you 7 don't know of anything else that hasn't been 8 provided to your lawyers? 9 A. No. 10 MR. JOHNSON: That's it. I 11 appreciate your time. I know it was a long 12 time. 13 MR. KILBORN: I've got a few 14 questions. 15 EXAMINATION 16 BY MR. KILBORN: 17 Q. Mr. Dees, the security 18 building where you were taken, does that 19 building have recording devices? 20 A. Yes, sir. 21 Q. What type? 22 A. I know it has video recording 23 devices, I don't know if it has audio or</p>	<p style="text-align: right;">Page 376</p> <p>1 And he'd have to go hook it back up. 2 But as far as where they were 3 actually located, I don't know, I just know 4 they had them. Because like I said, he took 5 several of us back there and showed us the 6 coax bragging how he would turn it -- 7 disconnect it, and then they would call and 8 make -- the cameras would go blank when you 9 disconnect your feed, the cameras go black, 10 then they would call him and make him 11 reconnect it. So they did have cameras in 12 our section. 13 Q. And you mentioned another 14 recording, you said it was -- was it a Bill 15 Shivers? 16 A. Seivers. 17 Q. Seivers. Said he had 18 recordings by Applegate? 19 A. Said Prater stated to him that 20 he had voice recordings of Applegate telling 21 him to terminate me, that he needed to get 22 rid of me. 23 Q. Okay. Now, prior to the 26th</p>

FREEDOM COURT REPORTING

<p style="text-align: right;">Page 377</p> <p>1 of February when you were taken into the 2 firing room in the security house or 3 building, had you had any warning at all or 4 had you been told that you were going to be 5 terminated or that you were being considered 6 for termination? 7 A. No, sir. I had no idea 8 whatsoever. It floored me when I walked in 9 the room and they told me I was being fired. 10 There was nothing leading up to it, no 11 inclination, nothing. 12 Q. For instance, Defendant's 13 Exhibit 6 is the e-mail counsel asked you 14 about February 21, 2007, at 5:30 a.m. from 15 Prater to Applegate. It says: Based on 16 this conversation, I feel that even if he 17 was not sleeping, that he doesn't care 18 enough about his job to prevent anyone from 19 thinking he was sleeping. John, my 20 recommendation, as hard as it is for me to 21 say, termination. Greg. 22 Had you been told anything 23 like that at that time?</p>	<p style="text-align: right;">Page 379</p> <p>1 Q. Do they know why Hyundai said 2 you were terminated? 3 A. Yes, sir. 4 Q. All right. Does that create 5 any embarrassment for you? 6 A. Yes, sir. Because I didn't 7 talk to no one for a long time about it, and 8 everyone just assumed that I had actually 9 fell asleep on the job and all my military 10 friends and all my close friends, they 11 couldn't believe it. They kept asking me 12 did -- what happened. And I just -- I 13 didn't talk to nobody about it for a long 14 time, because like I said, that's -- I've 15 never. 16 Q. And up until Hyundai decided, 17 in their infinite wisdom, that you were a 18 man who slept on the job, you had a 19 blemish-free record both in civilian and 20 military life? 21 A. Yes, sir. 22 Q. And now whenever you apply for 23 employment or apply for anything, bank</p>
<p style="text-align: right;">Page 378</p> <p>1 A. No, sir. And Prater when he 2 got anybody fired, he always bragged about 3 it later. He had been responsible for two 4 people being fired prior to me, and all we 5 heard was him bragging about how he had got 6 them fired. 7 Q. Were you told when you were 8 terminated that you -- You were told you 9 were being terminated for sleeping? 10 A. That's what that -- the lady 11 said. 12 Q. All right. Were you told that 13 you were being terminated, because, quote, 14 you don't care about your job to prevent 15 anyone from thinking you were sleeping? 16 A. No, sir. 17 Q. And counsel also asked you 18 about embarrassment. And you do attend a 19 church? 20 A. Yes, sir. 21 Q. And do the people in the 22 church know that you got terminated? 23 A. Yes, sir.</p>	<p style="text-align: right;">Page 380</p> <p>1 credit, where there's a question about have 2 you ever been terminated or received any 3 type of job action, you've got to put that 4 down? 5 A. Yes, sir. When I went to work 6 for International Paper in Thorsby, I made 7 -- I made leadman in three years, and that 8 was unheard of. 9 Q. And was that -- Does the fact 10 that that blemish is now on your reputation, 11 does that cause you any distress? 12 A. Yes, sir. It still causes 13 problems. Even between me and my wife. I 14 mean, that -- Like I said, I've -- I take 15 pride in my work, just like I do my uniform. 16 And if I go to do something, I put a hundred 17 and fifty percent into whatever I'm doing. 18 Even the production people there and 19 maintenance people, all, when they said -- 20 found out that I had been accused of 21 sleeping, they said: There's no way, he's 22 too hyper. Because I'm an outgoing person, 23 even at night. I've always been that way.</p>

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FREEDOM COURT REPORTING

<p style="text-align: right;">Page 381</p> <p>1 They said there's no way he was sleeping, it 2 ain't no way. And you can ask several of 3 the production people there in stamping, 4 production that I worked with, any of them, 5 they all know me. 6 MR. KILBORN: That's all I 7 have. 8 MR. JOHNSON: Just a couple 9 follow-up questions. 10 EXAMINATION CONTINUED 11 BY MR. JOHNSON: 12 Q. You mentioned some sort of 13 video in the security building? 14 A. Yes, sir. 15 Q. Do you know if it's actually 16 recording or just a video camera that's 17 monitored? 18 A. We was told it was a video 19 recording. 20 Q. Who told you that? 21 A. Prater and -- I have to think 22 about that one. Because it was one of the 23 other maintenance supervisors from one of</p>	<p style="text-align: right;">Page 383</p> <p>1 the ceiling, running conduit, waves through 2 conduit, through cable waves. There was no 3 way to follow that, no, we didn't have a 4 clue. 5 Q. Did you ever see them attached 6 to a camera? 7 A. No. I said there's no way. 8 But they had to -- How did they -- They said 9 they recorded the old girl doing the 10 striptease there in the plant by the press. 11 Q. Did you ever see any cameras 12 up in that third level near the SOP? 13 A. I never looked for them up 14 there. 15 Q. So you never saw any? 16 A. Like I said, I never looked 17 for any. They may have been up there, may 18 not have. I don't know, I never looked for 19 them. 20 Q. Okay. And what church do you 21 go to? 22 A. Hillcrest Baptist Church in 23 Maplesville, Alabama.</p>
<p style="text-align: right;">Page 382</p> <p>1 the other sections. I don't remember. 2 Q. When were you told that? 3 A. About from get-go. Well, they 4 briefed it in -- I believe they briefed it 5 in their hiring process. And -- Well, I 6 know it was recording, because they busted 7 one of the temporary workers out back and on 8 the floor there by the presses one night for 9 -- she was doing a striptease apparently 10 there by the presses one night, they said 11 the next thing they knew, security come 12 running through the building; said they used 13 the recording when they fired her. 14 Q. Okay. Are you aware of any -- 15 Well, you mentioned some coax cables? 16 A. For the cameras. 17 Q. Okay. Other than something 18 that Greg Prater might have told you about 19 those coax cables, do you know what they 20 were, where they went to, or where they came 21 from? 22 A. We tried to follow them out, 23 but it was seventy-five, seventy feet up in</p>	<p style="text-align: right;">Page 384</p> <p>1 Q. How big a church is that? 2 A. I don't know. Your average 3 sized church. Probably got a hundred people 4 there at any service. 5 Q. How many members total? 6 A. Oh, God, I don't know. 7 Q. You don't know? 8 A. I don't know. 9 Q. Do you know anybody else from 10 HMMA that works there -- or that goes to 11 church there? 12 A. Yes, sir. 13 Q. Who? 14 A. Keith Smith. 15 Q. Who is he? 16 A. He works -- He's a production 17 team leader over in general assembly. 18 Q. Okay. Now, you said people at 19 church knew that you had been terminated? 20 A. Yes, sir. 21 Q. Did you tell anybody at the 22 church? 23 A. Nope.</p>

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FREEDOM COURT REPORTING

Page 385	Page 387
<p>1 Q. Do you have any idea how they 2 knew?</p> <p>3 A. Yes, sir.</p> <p>4 Q. How?</p> <p>5 A. Keith's son worked in the 6 building I worked in. Derick.</p> <p>7 Q. You think Derick told somebody 8 at the church?</p> <p>9 A. They said Derick told his 10 father, and it just went from there. I live 11 in a small community, if you look wrong, 12 everybody knows it within five minutes.</p> <p>13 Q. Okay. Did you ever talk to 14 Derick Smith or Keith Smith about it?</p> <p>15 A. No, sir.</p> <p>16 Q. You never talked to either of 17 them?</p> <p>18 A. No, sir.</p> <p>19 Q. Okay. Do you know anybody who 20 has?</p> <p>21 A. No.</p> <p>22 Q. Do you know if your wife did?</p> <p>23 A. I don't know.</p>	<p>1 anything like this happen, and I was just -- 2 I went and talked to Mr. Bob and --</p> <p>3 Q. Who is Mr. Bob?</p> <p>4 A. -- explained to him everything 5 that happened. And he's the one who put me 6 in contact with Mr. Kilborn.</p> <p>7 Q. Okay. And is Bob Eddy just a 8 member of the church?</p> <p>9 A. He's a member of the church 10 and a friend.</p> <p>11 Q. Okay. But he's not like your 12 pastor or something like that?</p> <p>13 A. No, sir.</p> <p>14 Q. Okay. And what's the pastor's 15 name at the church?</p> <p>16 A. We don't have one. He went 17 north to be with his family who is ill, and 18 he resigned a few weeks ago. His father is 19 in bad health.</p> <p>20 Q. What was his name?</p> <p>21 A. Jason Vincent.</p> <p>22 Q. Did you ever talk to Jason 23 Vincent about this situation?</p>
Page 386	Page 388
<p>1 Q. Other than Derick and Keith 2 Smith, do you know anybody else at your 3 church who knows about it?</p> <p>4 A. I think Keith is the only one, 5 I think, from church that goes there. But, 6 like I said, there's several people there in 7 the community that work down there.</p> <p>8 Q. Did anybody from your church 9 say anything to you about what the situation 10 at HMMA?</p> <p>11 A. There was a couple that asked, 12 but I don't remember.</p> <p>13 Q. Do you know who asked?</p> <p>14 A. They was asking that Sunday, 15 and I was trying to avoid the issue because 16 I was embarrassed.</p> <p>17 Q. Did you ever have any 18 conversations with anybody at church that 19 you can recall, that knew about you being 20 terminated at Hyundai?</p> <p>21 A. Just one person. Mr. Bob 22 Eddy. He's the one -- When I got fired, I 23 didn't know what to do. I had never had</p>	<p>1 A. No, sir.</p> <p>2 Q. Did he ever call you to check 3 on you about it or do anything to suggest he 4 knew about it?</p> <p>5 A. Like I said, I was embarrassed 6 about it, I didn't let on -- I didn't want 7 to talk to -- I didn't want to talk to 8 nobody about it. Like I say, ain't never 9 had anything like this happen. And when you 10 got -- When I walked in that first Sunday 11 and Keith looked at me and just hung his 12 head, and other people, I started to turn 13 around and walk out.</p> <p>14 MR. JOHNSON: Okay. That's 15 all I've got. I appreciate it. 16 (The deposition was concluded at 5:33 p.m., 17 November 20, 2007.)</p> <p>18 19 20 21 22 23</p>

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FREEDOM COURT REPORTING

Page 389

1 REPORTER'S CERTIFICATE
2 STATE OF ALABAMA,
3 MONTGOMERY COUNTY,
4 I, Angela Smith McGalliard,
5 Registered Professional Reporter and
6 Certified Realtime Reporter, Commissioner
7 for the State of Alabama at Large, do hereby
8 certify that the above and foregoing
9 proceeding was taken down by me by
10 stenographic means, and that the content
11 herein was produced in transcript form by
12 computer aid under my supervision, and that
13 the foregoing represents, to the best of my
14 ability, a true and correct transcript of
15 the proceedings occurring on said date and
16 at said time.

17 I further certify that I am neither
18 of kin nor of counsel to the parties to the
19 action; nor in any manner interested in the
20 result of said case.
21

22 _____
23 Angela Smith
McGalliard, RPR, CRR,
CCR Lic. No. 98.

98 (Page 389)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

int 8/26 @ 10 AM

W 8/10

Letter
7/28

SSN= [REDACTED]

JERRY (LEON) DEES JR.

OBJECTIVE

Employment with Hyundai Corporation in a maintenance position.

SUMMARY OF QUALIFICATIONS

I am skilled in reverse dial and laser alignment. I can pass an X-Ray in stick, MIG, and TIG welding on plate and pipe. I am knowledgeable in hydraulic systems and trouble shooting them. I can read hydraulic, mechanical, and some electrical blue prints.

WORK EXPERIENCE

Nov 99 - Present International Paper Thorsby, Al
Maintenance Lead Man

- Assign work schedule for all the maintenance shifts on the veneer side of the plant which consists of four shifts.
- Ensure all parts are available to complete the assigned jobs.
- Plan, lead, and ensure successful completion of all major projects and shutdowns, as well as all assigned down days
- Always available for call in if the off shifts have a problem they can't solve.

EDUCATION

May 83 Clay County High School Ashland, Al

Jul 94 Wallace Community College Selma, Al
Welding and basic core curriculum

Jan 99 John Patterson Technical College Montgomery, Al
Basic and Advanced Hydraulics

EXTRACURRICULAR ACTIVITIES

Coaching a high school rifle team that is responsible for getting four of our five graduating senior's full scholarships at Birmingham Southern College and Jacksonville State College.

**DEFENDANT'S
EXHIBIT**

INTERESTS AND ACTIVITIES


I like hunting and fishing as well as hiking. I also like to ride my four wheeler and most outdoor sports.

LANGUAGES

I can speak and understand some Korean.

REFERENCES

Kieth Smith	Hyundai Corporation	[REDACTED]
Jason Vinson	Pastor Hillcrest Baptist Church	[REDACTED]
Jimmy Parnell	President, Chilton Water Authority	[REDACTED]

 HYUNDAI Hyundai Motor Manufacturing Alabama Rev Date: 01/10/06	RECEIPT of HANDBOOK ACKNOWLEDGEMENT Owner: Team Relations	HR-AL-HR-TR-F-00021 Revision Level: 00
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The information contained in the Team Member Handbook of Hyundai Motor Manufacturing Alabama, LLC has been prepared as an aid and a guideline to give you a summary of the benefits, policies, and procedures at HMMA. It contains information about what you can expect from HMMA, and in turn, what HMMA expects of you.

If, in this Handbook, we have inadvertently said or implied anything that is different from the actual provisions of any HMMA policy or benefit plan document, the actual provisions of the policy or benefit plan will govern.

If at any time you have any questions regarding policies, you may talk to your group leader, assistant manager, manager, or team relations representative.

The policies and statements contained in this Handbook, and in other provisions that may be added in the future, are not a contract of any kind, but are rather a description of company policies. Employment with HMMA is at will and is not offered, contracted, or promised for any specific length of time. You have the right at HMMA to quit for any reason or for no reason at any time. Conversely, HMMA may terminate your employment on the same basis. Although this Handbook reflects current policies, these policies may be unilaterally changed or rescinded by HMMA at any time.

I, Jerry L. Dees Sr., acknowledge that I have received, the Handbook and that it is my responsibility to read the handbook and ask questions if needed in order to gain understanding.

Signature: *Dees*

Team Member Number: 103039

Date: 10 Jan 08

**DEFENDANT'S
EXHIBIT**

2

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

MIDDLE

District of

ALABAMA

JERRY LEON DEES, JR.

SUMMONS IN A CIVIL ACTION

V.

HYUNDAI MOTOR MANUFACTURING
ALABAMA, LLC and HYUNDAI MOTOR AMERIC

CASE NUMBER:

2:07cv306-mht

TO: (Name and address of Defendant)

HYUNDAI MOTOR MOTOR AMERICA, INC.
c/o NATIONAL REGISTERED AGENTS, INC.
150 S. PERRY ST.
MONTGOMERY, AL 36104

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

VINCENT F. KILBORN, III
KILBORN, ROEBUCK & MCDONALD
1810 OLD GOVERNMENT ST.
P.O. BOX 66710
MOBILE, AL 36660

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

Debra P. Hackett

CLERK

(By) DEPUTY CLERK

DATE

4/12/07

DEFENDANT'S
EXHIBIT

3

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE	
NAME OF SERVER (PRINT)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<div style="margin-bottom: 10px;"> <input type="checkbox"/> Served personally upon the defendant. Place where served: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Returned unexecuted: </div> <div> <input type="checkbox"/> Other (specify): </div>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL \$0.00
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ Date _____ Signature of Server _____</p> <p style="text-align: center;">_____ Address of Server</p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

SAO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

MIDDLE

District of

ALABAMA

JERRY LEON DEES, JR.

SUMMONS IN A CIVIL ACTION

V.

HYUNDAI MOTOR MANUFACTURING
ALABAMA, LLC and HYUNDAI MOTOR AMERIC

CASE NUMBER:

2:07cv306-mht

TO: (Name and address of Defendant)

HYUNDAI MOTOR MANUFACTURING, LLC
c/o MR. RICHARD NEAL
700 HYUNDAI BLVD.
MONTGOMERY, AL 36105

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

VINCENT F. KILBORN, III
KILBORN, ROEBUCK & MCDONALD
1810 OLD GOVERNMENT ST.
P.O. BOX 66710
MOBILE, AL 36660

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

Debra P. Hackett

CLERK

(By) DEPUTY CLERK

DATE

4/12/07

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾		DATE
NAME OF SERVER (PRINT)		TITLE
Check one box below to indicate appropriate method of service		
<input type="checkbox"/> Served personally upon the defendant. Place where served:		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:		
<input type="checkbox"/> Returned unexecuted:		
<input type="checkbox"/> Other (specify):		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL \$0.00
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on _____ Date		
_____ Signature of Server		
_____ Address of Server		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

2007 APR 10 P 1:16
JERRY LEON DEES, JR.,

Plaintiff,

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Vs.

CASE NO. 07-07-

2:07CV306-mkt

HYUNDAI MOTOR MANUFACTURING
ALABAMA, LLC, and HYUNDAI
MOTOR AMERICA, INC.,

JURY TRIAL DEMANDED

Defendants.

COMPLAINT

Comes now the Plaintiff, JERRY LEON DEES, JR., by and through his counsel of record, and alleges against Defendants HYUNDAI MOTOR MANUFACTURING ALABAMA, L.L.C., and HYUNDAI MOTOR AMERICA, INC., as follows:

PARTIES

1. Plaintiff, JERRY LEON DEES, JR. (hereinafter "Dees"), is now, and was at all times relevant hereto, a resident of Maplesville, Chilton County, Alabama. Dees is a Staff Sergeant and combat MP in the 1165th Military Police of the Alabama Army National Guard (hereinafter "Guard"), and was an employee of Defendant HYUNDAI MOTOR MANUFACTURING ALABAMA, L.L.C. Dees has already served two tours in Iraq, and stands ready to serve again should his nation call.
2. Defendant, HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC, is a Delaware limited liability company having its principal place of business in

Montgomery, Montgomery County, Alabama, and is engaged in the manufacture of automobiles for sale in interstate commerce.

3. Defendant, HYUNDAI MOTOR AMERICA, INC., is a California corporation having its principal offices in California. HYUNDAI MOTOR AMERICA, INC. is engaged in the nationwide distribution of the vehicles manufactured by defendant HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC, and is registered to do business in Alabama.
4. Defendant, HYUNDAI MOTOR AMERICA, INC., is the alter ego of defendant HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC. Further, defendant HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC is a mere instrumentality of defendant, HYUNDAI MOTOR AMERICA, INC. These two defendants are hereinafter collectively referred to as "Hyundai."

VENUE

5. This action arises under the Uniformed Services Employment and Reemployment Rights Act of 1994 § 2(a), 38 U.S.C.A. §§ 4301-4333 (West 2007), as hereinafter more fully appears.
6. Defendant HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC, maintains its principle place of business in Montgomery County, Alabama.

FACTUAL ALLEGATIONS AS TO ALL COUNTS

7. Dees began working at Hyundai on or about November 21, 2005, as a maintenance technician in the Stamping Maintenance department, under the direct supervision of "team leader" Kevin Hughes (hereinafter "Hughes") and Stamping Maintenance assistant manager Greg Prater (hereinafter "Prater").

Prater reported to John Applegate, American maintenance senior manager (hereinafter "Applegate").

8. Harassment of Dees by Hyundai through Prater and Hughes began almost immediately when Prater learned that Dees was a member of the Alabama Army National Guard and had served two tours in Iraq.

9. Hyundai, through Prater, Hughes and Applegate, harassed Dees during his entire tenure at Hyundai. Harassing acts included:

- a. Prater repeatedly demanded that Dees provide military orders to excuse missing work when Dees would have to attend his monthly weekend training with the Guard, even though the Guard issues only an annual training schedule;
- b. Prater telling Dees he could not miss work to attend his Guard training;
- c. Prater frequently made derogatory remarks about the Guard in the presence of Dees and other employees;
- d. Prater told Dees that he could not go to the Human Resources department to complain about how he was being treated, despite Hyundai having an "open door" policy regarding employee complaints;
- e. Prater attempted to force Dees' coworkers to say that Dees had violated Hyundai policies and procedures when Prater knew it was not true;
- f. In an effort to coerce Dees into quitting his job at Hyundai so that Hyundai would not have to deal with Dees' Guard service obligations, Dees' was forced to clean the "pit" more frequently than the other

personnel. It became a way for Hyundai, through Prater and Hughes, to punish Dees. The pit is a highly dangerous area where metal pieces which are scrap from the stamping process, many of which are sharp, come off of a conveyor and are supposed to fall into a scrap bin. Many of the parts do not fall into the bin, but are thrown to the floor of the pit. This scrap process was running while Dees was made to clean the pit, making working in the pit far more dangerous than the maintenance technician's other duties. Dees cleaned the pit almost daily some weeks, and the frequency with which he was assigned to the pit was several times that of his coworkers.

10. Applegate ratified each and every action of harassment by Prater and Hughes by stating that he stood behind each and every decision they made in running the stamping maintenance department, and refusing to act on or even investigate complaints to Applegate about Prater and Hughes.

11. The harassment regarding Dees having to provide military orders for his monthly Guard service continued despite Human Resources confirming that Dees' was correct about there only being a annual schedule of training times. In an attempt to end the harassment, Dees finally asked the Guard to write a letter to Hyundai asking Hyundai to stop harassing Dees about his Guard duty.

12. Per Dees' request, on or about October 23, 2006, Sergeant Franklin Barnes of Dees' Guard unit wrote a Letter of Instruction ("LOI") to the Human Resources department at Hyundai. The LOI stated that military orders were

not cut, that only an annual schedule was prepared and could be furnished to Hyundai if it needed one, and that Barnes would be happy to provide a Letter of Participation stating that Dees was present on the weekends indicated on the schedule.

13. After the letter from Sergeant Barnes was sent to Hyundai, the incidences of harassment outlined above escalated until finally, on or about February 26, 2007, Prater got the Production Stamping Manager, Jim Brookshire, to falsely accuse Dees of sleeping on the job, whereupon Hyundai fired Dees.

14. Even if Dees had been sleeping, Dees was fired immediately and unceremoniously by Hyundai despite the fact that other employees caught sleeping were merely reprimanded – another act of harassment perpetrated on Dees by Hyundai.

15. In fact, Hyundai's own policies and procedures include *Corrective Action*, which is a six-step process to identify employee work performance weaknesses, provide counseling and a plan to correct the employee's work performance, and ultimately to terminate the employee if the preceding five steps do not provide the required improvement in the employee's work performance. Dees was never even subject to step one, *Discussion Planner*, wherein the employee's supervisor meets with the employee to determine if the performance issue is a failure in the process, equipment, or with the employee.

16. Upon firing Dees, Hyundai confiscated Dees' personal belongings kept in his locker at the plant, and did not allow Dees to collect them, even under

supervision. Dees' personal belongings included notes regarding dates, times, and specific acts of harassment he had been subjected to because of his military affiliation during his fifteen months of employment by Hyundai. These notes were not returned to Dees by Hyundai when Hyundai returned Dees' other personal belongings to him.

17. Because of Hyundai's termination of Dees in violation of USERRA and Alabama public policy, Dees has had to obtain other employment. Dees' new job pays less per hour, includes virtually no overtime, and has fewer benefits that Dees enjoyed at Hyundai.

COUNT ONE

Violations of the Uniformed Services Employment and Reemployment Rights Act of 1994 § 2(a), 38 U.S.C.A. § 4311

18. Dees incorporates herein all of the allegations in preceding paragraphs 1-17.
19. Dees is a Staff Sergeant and combat MP in the 1165th Military Police of the Alabama Army National Guard, and, as such, is a person protected under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") § 2(a), 38 U.S.C.A. §§ 4301-4333 (West 2007).
20. Hyundai violated § 4311 of USERRA by creating an environment of harassment in the Stamping Maintenance department at Hyundai, and harassed Dees continually because of his Guard membership and service obligations.
21. Hyundai further violated § 4311 when the pattern of harassment escalated after Dees had Sergeant Barnes of the Guard send a letter to Hyundai

reminding them of Hyundai's legal obligations with respect to Dees' military service membership and obligations.

22. As a result of Hyundai's termination of Dees in violation of § 4311 of USERRA, Dees now works for less pay and benefits than he enjoyed while employed at Hyundai.

WHEREFORE, Dees demands judgment against Hyundai for compensatory and punitive and/or liquidated damages, reasonable attorneys' fees and court costs under USERRA, 38 U.S.C.A. § 4323 (West 2007).

COUNT TWO

Outrage

23. Dees incorporates herein all of the allegations in preceding paragraphs 1-22.

24. Hyundai intentionally created a harassing environment and subjected Dees to a pattern of intentional harassment regarding Dees' membership in the Guard and Dees' Guard service obligations.

25. The specific acts of intentional harassment perpetrated by Hyundai were extreme and outrageous conduct.

26. Dees' termination by Hyundai was the culmination of the protracted pattern of intentional harassment related to Dees' Guard membership and requisite Guard service obligations, and therefore, violated the public policy of Alabama with respect to the employment of military reserve personnel.

27. As a result of Hyundai's extreme and outrageous conduct, Dees has suffered severe emotional distress.

WHEREFORE, Dees demands judgment against Hyundai for compensatory and punitive damages, reasonable attorneys' fees and court costs, and any other damages the court finds appropriate.

COUNT THREE

Conversion

28. Dees incorporates herein all of the allegations in preceding paragraphs 1-27.

29. Dees personal belongings in his locker at Hyundai were confiscated by Hyundai when Dees was unlawfully terminated, and Hyundai refused to allow Dees to collect his personal belongings, even under supervision. Dees' personal belongings included notes regarding the pattern of harassment engaged in by Hyundai through Hughes, Prater and Applegate during Dees' tenure as an employee at Hyundai.

WHEREFORE, Dees demands judgment against Hyundai for compensatory and punitive damages, reasonable attorneys' fees and court costs, and any other relief the court deems appropriate.

BY: 

Vincent F. Kilborn, III

Vincent F. Kilborn, III (KIL004)
KILBORN, ROEBUCK & McDONALD
1810 Old Government Street
Post Office Box 66710
Mobile, Alabama 36660
Telephone: (251) 479-9010
Fax: (251) 479-6747

OF COUNSEL:

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1810 Old Government Street
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Fax: (251) 479-6747

Jeffrey R. Sport (SPO005)
JEFFREY R. SPORT, P.C.
8475 Sterling Drive
Mobile, Alabama 36695
Telephone: (251) 633-7120
Fax: (251) 633-7252

PLAINTIFF RESPECTFULLY DEMANDS A TRIAL BY JURY OF THIS CAUSE

BY: 

Vincent F. Kilborn, III

DEFENDANT TO BE SERVED AS FOLLOWS:

Hyundai Motor Manufacturing, L.L.C.
c/o Mr. Richard Neal
700 Hyundai Blvd.
Montgomery, Alabama 36105

VIA CERTIFIED MAIL

Hyundai Motor America, Inc.
c/o National Registered Agents, Inc.
150 South Perry Street
Montgomery, Alabama 36104

VIA CERTIFIED MAIL

Powers, Nancy HMMA/HR

From: Dees, Jerry L. Jr HMMA/Plant Engineering

Sent: Tuesday, February 06, 2007 10:57 PM

To: Kimble, Greg HMMA/HR

Mr. Kimble,

I am writing to request a meeting with you regarding several issues that have arisen on my shift between Greg Prater, Kevin Hughes, and myself. I have talked to Human Resources on two separate occasions regarding Greg Prater and also filed a complaint on him through my National Guard Unit. There have been positive results from both meetings and once again I am seeking your help. I am currently working night shift but would greatly appreciate a meeting with you at your convenience. Thank you.

Leon Dees
Stamping Maintenance

**DEFENDANT'S
EXHIBIT**

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MAR-26-2007 13:52 FROM: ARNG-RECRUITING

TO: 133436652782172151 P:1

ATTN: MRS DEES

**FROM: SGT BARNES
DET 1, 1165TH MP
BREWTON, AL**

**DEFENDANT'S
EXHIBIT**

5

DEES000001

in: 13395652762111-1 002

DETACHMENT 1, 1165TH MILITARY POLICE (CBT)(SPT)
ALABAMA ARMY NATIONAL GUARD
95 AIRPORT DRIVE
BREWTON, ALABAMA 36426

26 MAR 2007

MEMORANDUM FOR RECORD

SUBJECT: IDT INSTRUCTIONAL LETTER FOR HUMAN RESOURCE OFFICER

1. This is in reference to a letter that was sent on behalf of SSG Jerry L. Dees, on or around 23 OCT 2006. SSG Dees notified this office that his supervisor was requiring a copy of orders for SSG Dees' IDT Training Periods, (drill weekends). At this time I mailed a LOI, letter of instruction to the Human Resource Office of Hyundai in Montgomery, which is SSG Dees' place of employment.

2. Basically the letter stated that orders for drill weekends were not cut. The only orders cut was a unit order for the 2 week annual training period. Drill weekends are scheduled out on a YTC, yearly training schedule and this provides the employer with all the drill dates and annual training dates for that physical year. Also if the employer required it, the unit would gladly provide a Letter of Participation stating that SSG Dees was present at the scheduled drill. I also provided a copy of the yearly drill calendar to the HRO and to SSG Dees to give to his supervisor. I also informed the HRO if there was anything that the unit could do to make this process easier for the employer, let me know.

3. If you need any further information, please contact me, SGT BARNES at 251-867-5473.

FOR THE COMMANDER:

Franklin D Barnes
FRANKLIN D. BARNES
SGT. MP, AL ARNG
TRAINING NCO

DEES000002

Clevenger, Robert A HMMA/HR

From: Applegate, John HMMA/Plant Engineering
 Sent: Wednesday, February 21, 2007 5:58 AM
 To: Clevenger, Robert A HMMA/HR
 Subject: FW: Leon Deez

From: Prater, Greg L HMMA/Plant Engineering
 Sent: Wednesday, February 21, 2007 5:20 AM
 To: Applegate, John HMMA/Plant Engineering
 Subject: Leon Deez

John per Leon and I and Wills conversation: I started that it was reported by management that he was sleeping in the SOPS -- he said I know who it is it was Jim, I didn't confirm or deny, I just said I was just following up. Leon said that he was not sleeping there in the SOPS, He watched Jim walk all around the Mezzanine area and he was Text Messaging his daughter due to the bad weather, I asked what time he said around 10:30 or 11 pm he wasn't for sure, He also stated that he knew what Jim was doing and what he thought he was doing, he just watched him and continued text messaging, I asked why would you leave a question in his mind, why didn't he nod at him or wave or something just to prove that he wasn't sleeping, his response is I just don't give a DAMN, You guys just do what ever you want IM fed up with this SHIT, I explained that what you do if you were a Forward Observer on look out and on Guard Duty and you had some one (Officer) come by would you have done the same, HIS Reply was that's totally different, you cant compare that with this, and he goes on about his war stories, then back to the point, I asked him at any time did Jim approach you while you were Text Messaging him he said the closest he came to me was 50 ft and that was it ... I asked him again are you sure that he couldn't have approached you when you were looking down or anything, his reply NO the closest he got was 50ft. and I asked him if he had anything else to say... he grumbled around about he wanted to talk with Jim and confront this and I told him NO, that this was not to be brought up to Jim he didn't need to confront Jim, that he needed to leave things alone with him, he said again bring him in here, I said again, No that all I was doing was following up, and trying to gather facts that's all. He didn't need to confront Jim that this could make things worst especially if it were a hostile confrontation. I asked him for anything else, he said no. Based on this conversation I feel that even if he were not sleeping, that he doesn't care enough about his job to prevent anyone from thinking his was sleeping. John my recommendation, as hard as it is for me to say: Termination. Greg

**DEFENDANT'S
EXHIBIT**

6

2/23/2007

DEES V HMMA 00035 DOCS PRODUCED



March 7, 2007

Jerry Leon Dees Jr
[REDACTED]
[REDACTED]

Dear Leon:

You were left a phone message on March 2, 2007, stating you had met the contact requirement for Team Member Review. On March 5, 2007 and again on March 7, 2007 you were contacted but a phone answering machine was reached.

To continue the Team Member Review process you must meet with Rob Clevenger on Monday March 12, 2007 at 10:00am to review the process and select your panel. At that time you will be given the date and time of your review panel meeting. Please come to the security building at gate 3 at the specified time above.

Sincerely,

Wendy Warner
Manager, Employment
Hyundai Motor Manufacturing Alabama, LLC

**DEFENDANT'S
EXHIBIT**

7

03/26/2007 13:16 FAX 3343665278

TO: 13343665278 FAX 3343665278

MAR-26-2007 13:52 FROM: ARNG-RECRUITING



HEADQUARTERS
1165th MILITARY POLICE COMPANY
Alabama Army National Guard
550 Fairwood Blvd
Fairhope, Alabama 36532



21 Oct 06

ATM4-CO

MEMORANDUM FOR All Personnel, 1165th Military Police Company

SUBJECT: 2007 IDT (Drill) Dates for 1165th Military Police Company

1. The training year 2007 IDT (Drill) dates for the 1165th Military Police Company is as follows:
(Remember- Drill Dates Can Change Based on OPCON.)

FY 07 Drill Dates:

21-22 October 2006 (Preparation for COMET)
04-05 November 2006 (COMET Inspection)
09-10 December 2006 (Family Day/Briefings)
06-07 January 2007 (APFT / CTT)
03-04 February 2007 (SRP Mobile AL Ft Whitting)
03-04 March 2007 (PRI / Training, preload weapons Q)
20-21-22 April 2007 (IWQ Eglin AFB MUTA 6)
05-06 May (Annual Training 12 May - 26 May 07) 11 PAX 31B
02-03 June 2007 (APFT Make-up/ Semi Annual ht/wt & Showdown Insp 100%)
No July Drill
3-4-5 August 2007 (IWQ Make-up / CSW Eglin AFB MUTA 6)
08-09 September 2007 (CTT Make-up)


Annual Training (Belize 11 PAX 12 May -26 May 07) MP's only

2. Drill time: 0715. Training Meeting: 0645 for all key leaders/section sergeants. PT clothes/shoes must be brought each drill. Uniform unless otherwise specified: BDU's/Patrol Cap

3. YOU MAY ONLY BE EXCUSED BY THE COMMANDER.

4. Point of contact is SFC Wendell C. Richburg @ 251-928-9333.

FOR THE COMMANDER:


KEVIN A. SMITH
1LT, MP, AL ARNG
COMMANDER

**DEFENDANT'S
EXHIBIT**

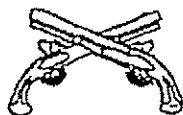
8

DEES000003

03/26/2007 13:16 FAX 3343665278

TO: 1334366200004

MAR-26-2007 13:52 FROM: ARNG-RECRUITING



DETACHMENT 1, 1165TH MILITARY POLICE (CBT)(SPT)
ALABAMA ARMY NATIONAL GUARD
95 AIRPORT DRIVE
BREWTON, ALABAMA 36426

01 OCT 2005

TM4A1-RNCO

MEMORANDUM FOR All Personnel, Det 1, 1165th Military Police Company

SUBJECT: 2006 IDT (Drill) Dates for Det 1, 1165th Military Police Company

1. The training year 2006 IDT (Drill) dates for Det 1, 1165th Military Police Company is as follows:
(Remember Drill Dates Can Change Based on OPCON)

FY 06 Drill Dates:

01-02 October 2006
05-06 November 2006
03-04 December 2006
07-08 January 2006
04-05 February 2006
04-05 March 2006
01 April 2006
13-14 May 2006
02, 03-04 June 2006
08-09 July 2006
05-06 August 2006
09-10 September 2006


Annual Training (Ft McClellan, Alabama 05-MAR-06 – 19 MAR 2006).

2. Drill time 0700. Training meeting 0630 for all key leaders/section sergeants. PT cloths and shoes must be brought each drill. Uniform unless otherwise specified: BDU's/Patrol Cap.

3. YOU MAY ONLY BE EXCUSED BY THE COMMANDER.

4. Point of contact is SGT Franklin D. Baires Jr. @ 251-867-5473

FOR THE COMMANDER:


SHAWN C DOLL
2LT, MP, AL ARNG
DET COMMANDER

**DEFENDANT'S
EXHIBIT**

9

DEES000004

Leon Dees Locker Contents

- 2 gloves (1 pair)
- 1 clip board
- 1 WIRING component
- 1 WIRING component
- Hunting brochure
- 1 screw tool
- 1 Hunting & Fishing Digest
- 1 Registration Brochure - weight loss program
- 1 paint brush
- 1 drill bit
- 1 plug - Thomas & Betts
- 1 pack of pens / pencils
- 1 writing pen
- 1 pack of Altoids
- 1 pack of Altoids - Seltzer
- 1 security badge clip
- 1 lockout / tag out picture + larger sign
- 2 band aids

9/10/2007

8:523 pm

DEFENDANT'S
EXHIBIT

11

CHS (Chris Smith) John M. Chenney, Sgt. Barry Jackson
Barry Jackson



February 26, 2007

Jerry Leon Dees
[REDACTED]
[REDACTED]

Dear Leon:

It has been brought to my attention on February 14, 2007 you were found, by a member of HMMA management, in the third floor overhead sleeping

HMMA policy states, "Serious and excessive violations of HMMA's performance standards", is a serious misconduct violation. When a person commits such an action against HMMA and/or his/her fellow Team Members, he/she may be terminated from employment. HMMA considers your action to be in violation of the aforementioned policy.

Based on the aforementioned, I regret that I have no alternative but to terminate your employment, effective immediately.

Sincerely,

Wendy Warner
Manager, Employment
Hyundai Motor Manufacturing Alabama, LLC

**DEFENDANT'S
EXHIBIT**

DEES V HMMA 00006 DOCS PRODUCED

Page 1 of 7

LEON DEES

Account Number

Invoice Number

Bill Date 03/05/07

Account Summary

Previous Balance	
Payments	CR
Adjustments	.00
Balance Forward - Due Immediately	.00
Late Payment Charges	.00
Current Monthly Charges	.00

Total Amount Due on 04/01/2007

Amount Enclosed

Total Amount Due on 04/01/2007

Account Number
LEON DEES

Customer Service

Dial toll free

Dial *611 from your
wireless phone

Payments by Mail
Please detach and mail
the pay stub at the
right with your
payment to ensure
prompt handling.

Easy Payment Options
Call Customer Service
for ways to pay by
phone, credit card, or
establish UPay direct
debit

**DEFENDANT'S
EXHIBIT**

13

Page 2 of 7

Account Number
Bill Date
Invoice Number

03/25/07

Payments & Adjustments for LEON DEES

Payments

Date	Account Number	Description	Amount	CR
2/27/07		PAYMENT		CR
		Total Payments		CR

Adjustments & Taxes

Date	Account Number	Description	Amount
		Total Adjustments & Taxes	\$.00

Current Monthly Charges for LEON DEES

Monthly Service Summary

Account Number	Name	Monthly Access # Features	Total Usage Charges	Access & Credit	Net Charges
334-418-1445	LEON				
	Total				

Total Current Monthly Charges

General Billing Information

Taxes are calculated in accordance with the appropriate laws in your area and may be applied to transactions differently, whether the taxes are federal, state, county, local, regional, etc.

Universal Service Fund (USF) Fees: The USF supports affordable access to telecommunications services for schools, libraries, low-income customers and high cost areas.

Regulatory Program Fees: A monthly, per line fee which helps Universal recover some of our costs of satisfying certain federal government mandates and program related to customers.

Fraud Protection Fees: A monthly, per line fee that funds Universal's efforts to protect our customers from identity theft.

USF, Fraud Protection and Regulatory Program Fees are neither taxes nor government imposed assessments but are charges which we are allowed to assess to cover our costs of compliance with these programs.

Port Fee: Mandatory fee for supplying network upgrades which are required for emergency service providers to determine the location of wireless calls who dial 911. 911 service may not be available or may be of limited availability at this time.

Late Payment Fee of 1.5% may be applied to any past due amount.

Payments allowed for non-sufficient funds or uncollected funds will be resubmitted for electronic payment.

Selection of service plan(s), additional and/or changes to service are the sole responsibility of the customer.

Ringtone

Changing your phone's ringer is now even easier! Download one or more songs right on your GSM compatible wireless phone. Choose from an endless variety of categories - everything from Jazz to Hard Rock to movie clips. Want to know more? Visit

Add a Line

Delight your teen, spouse or parents by getting them their own phones. Add them to your account so you can always be in touch. Additional lines, available on select plans, are an affordable way to share minutes and stay connected with those you love.

Refer to Your Account Number

Whether you contact us by phone or mail, please mention your account number, found at the top of page 1.

Changing Your Address

If you are moving or need to make changes to your mailing address, please contact Customer Service

Returned Payments

A \$25.00 charge will be added to your account on all payments returned including unsuccessful electronic payments due to insufficient funds, closed accounts or invalid account information.

Date	Flow	Amount Paid	Number of Cds	EmSts	Paid	Alpms	Total	Cd Csts
Home Area Detail								
FEB 10	12:14P	334-419-0008	VOICE MAIL CL	100 0	\$0.0	\$0.0	\$0.0	\$0.0
FEB 10	01:42P	334-419-0004	VOICE MAIL CL	100 0	.00	.00	.00	.00
FEB 17	00:06P	334-368-0315	MAPLESVAL	200 0	.00	.00	.00	.00
FEB 18	02:30P	334-419-0008	VOICE MAIL CL	300 0	.00	.00	.00	.00
MAR 01	05:19P	815-338-2410	MAPLESVAL	200 0	.00	.00	.00	.00
MAR 05	06:41A	334-368-2821	MAPLESVAL	200 P	.00	.00	.00	.00
MAR 05	06:06A	334-368-2821	MAPLESVAL	100 P	.00	.00	.00	.00
Total Home Area Detail				1300	\$0.00	\$0.00	\$0.00	\$0.00
Extended Area Detail								
BIRMINGHAM								
FEB 04	04:52P	334-308-0015	MAPLESVAL	100 0	.00	.00	.00	.00
FEB 04	05:59P	334-308-0015	MAPLESVAL	1300 0	.00	.00	.00	.00
FEB 04	05:51P	334-419-0008	INCOMING CL	200 0	.00	.00	.00	.00
FEB 04	05:38P	334-308-0015	MAPLESVAL	100 0	.00	.00	.00	.00
FEB 04	07:50P	334-419-0008	INCOMING CL	100 0	.00	.00	.00	.00
FEB 04	07:50P	334-368-0315	ENTERPRISE AL	100 0	.00	.00	.00	.00
FEB 04	07:50P	334-368-0315	MAPLESVAL	100 0	.00	.00	.00	.00
FEB 04	07:52P	334-419-0008	MAPLESVAL	200 0	.00	.00	.00	.00
FEB 04	07:54P	815-338-2410	SEMA DELA	100 0	.00	.00	.00	.00
FEB 05	06:07P	334-308-0015	MAPLESVAL	200 0	.00	.00	.00	.00
FEB 05	06:20P	334-308-0015	MAPLESVAL	100 0	.00	.00	.00	.00
FEB 05	06:20P	334-308-0015	MAPLESVAL	600 0	.00	.00	.00	.00
FEB 05	06:58P	334-368-0315	MAPLESVAL	400 P	.00	.00	.00	.00
FEB 05	06:32P	334-419-1615	SEMA DELA	500 0	.00	.00	.00	.00
FEB 06	06:38P	334-419-0008	INCOMING CL	100 0	.00	.00	.00	.00
FEB 08	06:41P	334-419-0008	ENTERPRISE AL	100 0	.00	.00	.00	.00
FEB 08	06:57A	334-419-0008	INCOMING CL	100 P	.00	.00	.00	.00
FEB 09	05:58A	334-419-0008	INCOMING CL	100 P	.00	.00	.00	.00
FEB 09	01:48P	334-419-0008	INCOMING CL	100 P	.00	.00	.00	.00
FEB 09	01:58P	334-419-0008	INCOMING CL	100 P	.00	.00	.00	.00
FEB 09	06:52P	334-419-0008	INCOMING CL	100 P	.00	.00	.00	.00
FEB 10	11:30A	334-419-0008	INCOMING CL	100 0	.00	.00	.00	.00
FEB 11	06:56P	334-308-0015	MAPLESVAL	100 0	.00	.00	.00	.00
FEB 11	08:14P	334-419-0008	INCOMING CL	100 0	.00	.00	.00	.00
FEB 12	01:51P	334-419-0008	INCOMING CL	200 P	.00	.00	.00	.00
FEB 12	07:48P	334-419-0008	INCOMING CL	100 0	.00	.00	.00	.00
FEB 12	07:49P	334-419-0008	INCOMING CL	300 0	.00	.00	.00	.00
FEB 13	05:36P	334-419-0008	INCOMING CL	100 P	.00	.00	.00	.00
FEB 13	05:41P	334-419-0008	INCOMING CL	100 P	.00	.00	.00	.00
FEB 13	06:07P	334-419-0008	INCOMING CL	100 0	.00	.00	.00	.00
FEB 13	06:45P	334-419-0008	ENTERPRISE AL	100 0	.00	.00	.00	.00
FEB 13	06:57P	334-419-0008	ENTERPRISE AL	100 0	.00	.00	.00	.00
FEB 14	09:19A	334-419-0008	ENTERPRISE AL	100 0	.00	.00	.00	.00
FEB 14	03:33P	334-419-0008	INCOMING CL	200 P	.00	.00	.00	.00
FEB 14	05:13P	334-419-0008	INCOMING CL	100 P	.00	.00	.00	.00
FEB 14	05:49P	334-419-0008	INCOMING CL	100 P	.00	.00	.00	.00
FEB 14	05:54P	334-419-0008	ENTERPRISE AL	100 P	.00	.00	.00	.00
FEB 14	06:29P	334-419-0008	INCOMING CL	100 0	.00	.00	.00	.00
FEB 14	07:32P	334-368-0015	MAPLESVAL	500 0	.00	.00	.00	.00

Detail for NIKKI 334-419-0008 (continued)

Date	Year	Number/Center	Description of Exp	Administrative	Project	Alcohol	Total
Extended Area Detail (continued)							
MAR 01	11:54 A	331-368-3271	AAPIESVCL	4:00 P	.00	.00	.00
MAR 02	06:51 P	334-418-0008	INCOMING CL	4:00 0	.00	.00	.00
MAR 02	01:50 P	334-419-0003	INCOMING CL	1:00 0	.00	.00	.00
MAR 02	03:12 P	330-368-5941	DECKERS CG	5:00 0	.00	.00	.00
MAR 02	05:11 P	206-287-1014	CLANTONAL	1:00 0	.00	.00	.00
MAR 02	05:12 P	206-765-5747	CLANTONAL	1:00 0	.00	.00	.00
MAR 02	05:12 P	206-765-6056	CLANTONAL	2:00 0	.00	.00	.00
MAR 02	05:14 P	206-765-5747	CLANTONAL	2:00 0	.00	.00	.00
MAR 02	03:20 P	206-755-6743	CLANTONAL	6:00 0	.00	.00	.00
MAR 03	08:51 A	331-368-0315	AAPIESVCL	1:00 0	.00	.00	.00
MAR 03	09:37 A	331-418-0008	INCOMING CL	3:00 0	.00	.00	.00
MAR 03	02:31 P	334-368-0315	AAPIESVCL	3:00 0	.00	.00	.00
MAR 05	03:50 P	334-419-0008	INCOMING CL	3:00 0	.00	.00	.00
MAR 05	01:54 P	615-336-7478	WASHVCL 1 TN	1:00 0	.00	.00	.00
MAR 06	01:02 P	331-368-0315	AAPIESVCL	1:00 0	.00	.00	.00
AL Bimifin							
MAR 01	03:20 P	334-418-0003	INCOMING CL	1:00 P	5:00	5:00	5:00
Total Extended Area Detail				312:04	4:00	5:00	5:00
Total of All Details				5:00	5:00	5:00	5:00

Legend P = Pooled Nitrogen O = Oil Pooled Nitrogen CF = Cell Temperature 1,025 MB = 1 MB

Detail for Nikki 334-419-0008 (continued)

Bite	Tier	Number (P)	Evaluation of Fee	Mor.Dic.	Paid	Admin.	Logist	Cust.Cats
Extended Area Detail (continued)								
FEB 15	0638 P	334-419-0008	INCOMING CL	1500 P	.00	.00	.00	.00
FEB 15	0630 P	334-404-6745	ENTERPRISE AL	1500 D	.00	.00	.00	.00
FEB 15	0631 P	334-419-0006	INCOMING CL	1500 D	.00	.00	.00	.00
FEB 15	0634 P	334-419-0009	INCOMING CL	900 D	.00	.00	.00	.00
FEB 16	0542 P	334-419-0008	INCOMING CL	1500 D	.00	.00	.00	.00
FEB 16	0630 P	334-419-0008	INCOMING CL	1500 D	.00	.00	.00	.00
FEB 17	0700 A	334-419-0008	INCOMING CL	1500 D	.00	.00	.00	.00
FEB 17	0700 A	334-404-6745	ENTERPRISE AL	1500 D	.00	.00	.00	.00
FEB 17	1721 P	334-419-0008	INCOMING CL	3000 D	.00	.00	.00	.00
FEB 17	0145 P	615-336-4479	HASHPL TH	1500 D	.00	.00	.00	.00
FEB 18	0631 P	334-336-0325	MAPLESVAL	1500 D	.00	.00	.00	.00
FEB 18	0724 P	334-336-0325	MAPLESVAL	1500 D	.00	.00	.00	.00
FEB 19	0656 P	334-336-0325	MAPLESVAL	2500 D	.00	.00	.00	.00
FEB 19	0656 P	334-336-0325	MAPLESVAL	1500 D	.00	.00	.00	.00
FEB 20	0630 P	615-336-4479	AORITE TN	1600 D	.00	.00	.00	.00
FEB 20	1104 A	615-336-4479	KORIRE TN	1500 P	.00	.00	.00	.00
FEB 20	1105 A	615-336-4479	MAURE TN	1500 P	.00	.00	.00	.00
FEB 21	0632 P	334-419-0008	INCOMING CL	5000 D	.00	.00	.00	.00
FEB 21	0539 P	334-336-0325	MAPLESVAL	500 P	.00	.00	.00	.00
FEB 22	0635 P	334-419-1445	SERMA DEL AL	1500 D	.00	.00	.00	.00
FEB 22	0634 P	334-419-0008	INCOMING CL	1500 D	.00	.00	.00	.00
FEB 24	1040 A	334-336-1921	MAPLESVAL	1500 D	.00	.00	.00	.00
FEB 24	1041 A	334-336-0325	MAPLESVAL	1500 D	.00	.00	.00	.00
FEB 24	1157 A	334-419-0008	INCOMING CL	1500 D	.00	.00	.00	.00
FEB 24	1147 P	334-404-6745	ENTERPRISE AL	1500 D	.00	.00	.00	.00
FEB 24	1248 P	334-336-0325	MAPLESVAL	500 D	.00	.00	.00	.00
FEB 24	1277 P	334-404-6745	ENTERPRISE AL	1500 D	.00	.00	.00	.00
FEB 24	0111 P	615-336-4479	NASHVIL TN	1500 D	.00	.00	.00	.00
FEB 24	0111 P	615-336-4479	NASHVIL TN	1500 D	.00	.00	.00	.00
FEB 24	0115 P	615-336-4479	NASHVIL TN	1500 D	.00	.00	.00	.00
FEB 24	0116 P	615-336-4479	NASHVIL TN	1500 D	.00	.00	.00	.00
FEB 24	0121 P	334-419-0008	INCOMING CL	1500 D	.00	.00	.00	.00
FEB 24	0121 P	334-419-1446	SEUMA DEL AL	1500 D	.00	.00	.00	.00
FEB 24	0121 P	334-404-6745	ENTERPRISE AL	1500 D	.00	.00	.00	.00
FEB 24	0122 P	334-419-0008	INCOMING CL	400 D	.00	.00	.00	.00
FEB 28	0642 P	334-419-0008	INCOMING CL	3000 D	.00	.00	.00	.00
FEB 28	0638 P	334-336-0325	MAPLESVAL	600 P	.00	.00	.00	.00
FEB 28	0700 P	334-256-0729	MAPLESVAL	7500 D	.00	.00	.00	.00
FEB 28	0706 P	334-419-0008	INCOMING CL	200 D	.00	.00	.00	.00
FEB 28	0803 P	205-807-0017	BIRMINGHAM AL	700 D	.00	.00	.00	.00
MAR 01	0642 A	305-834-5581	DECEMBER CO	5000 D	.00	.00	.00	.00
MAR 01	1146 A	334-336-2371	MAPLESVAL	1500 P	.00	.00	.00	.00
MAR 01	0635 P	615-336-4479	NASHVIL TN	3000 P	.00	.00	.00	.00
MAR 01	0635 P	334-419-0008	INCOMING CL	400 P	.00	.00	.00	.00
MAR 01	0638 P	334-419-0008	INCOMING CL	300 P	.00	.00	.00	.00
MAR 01	0648 P	334-386-0373	MAPLESVAL	1500 P	.00	.00	.00	.00
MAR 01	0651 P	205-387-1081	CUBITONAL	300 D	.00	.00	.00	.00
MAR 01	0656 P	334-419-0008	INCOMING CL	2500 D	.00	.00	.00	.00
MAR 02	1132 A	334-336-1921	MAPLESVAL	1500 P	.00	.00	.00	.00
MAR 02	1133 A	334-336-0325	MAPLESVAL	700 P	.00	.00	.00	.00

Account Number
 B710 Date
 Service Number

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Summary for LEON 334-419-1445

Access & Features	Amount
Monthly	
3/05 - \$0.05	
300 Included Min.	
HOME AREA MKT 333	\$35.00
ACCESS CREDIT	.00
CALL-WAIT/WD/CONF	5.00 CR
MOBILE BROWSING	.00
CANADA ROAM \$50	.00
NAT TO CANADA \$30	.00
NAT TO MEXICO \$30	.00
VOICEMAIL	.00
DETAILED BILLING \$0	.00
INCLUDED ZMB DATA	.00

Total Access & Features Charges

Monthly Usage	Quantity	Amount
Plan Minutes Used	\$38.00	\$38.00

Taxes & Other Fees

Taxes & Other Fees	Amount
AL STATE 911 SURCHAR	\$2.70
AL CELLULAR SERVICE	2.10
REGULATORY PRGM FEE	.96
FEDERAL USF FEE	\$1.08
Total Taxes & Other Fees	\$4.84

Detail for LEON 334-419-1445

Date	Time	Number Called	Description of Call	Minutes	Ported	Amount	Call Costs
FEB 07	03:20 P		INCOMING CL	1:00 P		\$1.00	\$1.00
FEB 08	04:26 A		INCOMING CL	2:00 P		.00	.00
FEB 08	03:02 A		INCOMING CL	1:00 P		.00	.00
FEB 08	03:26 P	706-315-3972	COLUMBIA GA	1:00 P		.00	.00
FEB 08	03:41 P	334-366-0076	MAPLESV AL	2:00 P		.00	.00
FEB 08	11:54 A	334-419-1445	VOICEMAIL CL	1:00 P		.00	.00
Total Access & Features Charges							\$4.84

Detail for LEON 334-419-1445 (continued)

Date	Time	Number Called	Description of Call	Minutes	Ported	Amount	Call Costs
FEB 12	07:13 P		INCOMING CL	4:00 P		.00	.00
FEB 12	07:18 P		INCOMING CL	2:00 P		.00	.00
FEB 13	06:22 P		INCOMING CL	1:00 P		.00	.00
FEB 13	06:30 P	334-366-0076	MAPLESV AL	1:00 P		.00	.00
FEB 13	06:34 P	334-419-0003	MOBILE CL	1:00 P		.00	.00
FEB 14	07:17 P	334-419-1445	VOICEMAIL CL	1:00 P		.00	.00
FEB 15	06:20 A	334-419-1445	VOICEMAIL CL	1:00 P		.00	.00
FEB 15	06:20 A	334-366-2911	MOBILESV AL	3:00 P		.00	.00
FEB 15	06:49 P	334-419-1445	VOICEMAIL CL	2:00 P		.00	.00
FEB 16	06:18 P	334-366-0076	MAPLESV AL	4:00 P		.00	.00
FEB 17	06:10 P	334-419-1445	VOICEMAIL CL	1:00 P		.00	.00
FEB 17	06:11 P	334-391-2722	MONTGOMERY AL	1:00 P		.00	.00
FEB 17	06:20 P	334-391-2722	MONTGOMERY AL	3:00 P		.00	.00
FEB 17	06:20 P	706-315-3972	COLUMBIA GA	1:00 P		.00	.00
FEB 17	06:24 P		INCOMING CL	1:00 P		.00	.00
FEB 17	06:55 P		INCOMING CL	2:00 P		.00	.00
FEB 17	07:00 P	334-419-1445	VOICEMAIL CL	2:00 P		.00	.00
FEB 17	07:01 P	334-419-1445	MOBILE CL	2:00 P		.00	.00
FEB 17	08:42 P	334-366-0076	MAPLESV AL	1:00 P		.00	.00
FEB 18	11:15 P	334-708-5921	MONTGOMERY AL	1:00 P		.00	.00
FEB 19	08:33 P	334-366-0076	MAPLESV AL	2:00 P		.00	.00
FEB 19	10:34 P		INCOMING CL	1:00 P		.00	.00
FEB 19	10:38 P	334-419-1445	VOICEMAIL CL	2:00 P		.00	.00
FEB 21	08:14 P	334-419-1445	VOICEMAIL CL	1:00 P		.00	.00
FEB 21	08:15 P	334-366-0076	MAPLESV AL	1:00 P		.00	.00
FEB 21	08:12 P	334-419-1445	VOICEMAIL CL	2:00 P		.00	.00
FEB 21	09:03 P	334-419-0003	MOBILE CL	6:00 P		.00	.00
FEB 23	07:29 P		INCOMING CL	2:00 P		.00	.00
FEB 27	07:58 A	334-419-1445	VOICEMAIL CL	1:00 P		.00	.00
FEB 28	06:00 A	334-419-1445	VOICEMAIL CL	1:00 P		.00	.00
FEB 28	11:38 A	334-366-2921	MAPLESV AL	3:00 P		.00	.00
MAR 01	11:30 A	205-205-5027	BIRMINGHAM AL	1:00 P		.00	.00
MAR 02	09:05 A	334-419-1445	VOICEMAIL CL	1:00 P		.00	.00
MAR 02	09:52 A	334-419-1445	VOICEMAIL CL	2:00 P		.00	.00
MAR 02	09:58 A	334-419-1445	VOICEMAIL CL	1:00 P		.00	.00
MAR 07	10:14 A		INCOMING CL	2:00 P		.00	.00
MAR 07	10:17 A		INCOMING CL	1:00 P		.00	.00
MAR 07	10:18 A	205-205-5027	BIRMINGHAM AL	6:00 P		.00	.00
MAR 07	10:28 A	334-419-1445	VOICEMAIL CL	1:00 P		.00	.00
MAR 07	10:30 A	334-419-1445	VOICEMAIL CL	1:00 P		.00	.00
MAR 07	10:32 A	251-428-0003	FAIRHOPE AL	1:00 P		.00	.00
MAR 07	07:51 P	251-238-4119	BREVORT AL	8:00 P		.00	.00
Total Access & Features Charges							\$4.84

Extended Area Detail

Date	Time	Number Called	Description of Call	Minutes	Ported	Amount	Call Costs
MAR 04	07:01 A	251-889-0057	MOBILE AL	8:00 P		.00	.00
MAR 04	07:10 A	251-669-0057	MOBILE AL	1:00 P		.00	.00

Detail for LEON 334-419-1445 (continued)

[illegible]

Detail for LEON 334-419-1445 (continued)

Date	Trn	From/To/Used	Definition of FNF	MySoc. Period	Admva.	LTOTtd	Totl
FEB 04	02:11 A	251-650-0057	MOBILE #AL	7500 0	00	00	00
FEB 04	02:53 A	251-650-0057	MOBILE #AL	1200 0	00	00	00
FEB 04	02:59 A	251-397-0337	MOBILE #AL	500 0	00	00	00
FEB 04	02:59 A	251-397-0337	BREVTON AL	3500 0	00	00	00
FEB 04	03:02 A	251-650-0057	MOBILE #AL	3500 0	00	00	00
FEB 04	03:07 A	251-650-0057	MOBILE #AL	10700 0	00	00	00
FEB 04	03:23 A	251-464-5245	ENTERPRISE AL	1500 0	00	00	00
FEB 04	03:41 A	334-396-0025	MAPLESVAL AL	1500 0	00	00	00
FEB 04	03:48 P	334-419-1445	INCOMING CL	1500 0	00	00	00
MAR 03	05:35 A	334-404-0025	ENTERPRISE AL	1800 0	00	00	00
MAR 03	05:36 A	334-366-0076	MAPLESVAL AL	2800 0	00	00	00
MAR 03	05:53 P	334-396-0025	MAPLESVAL AL	1500 0	00	00	00
MONTHLY							
FEB 06	06:19 A	334-419-1445	INCOMING CL	1500 0	00	00	00
FEB 06	06:25 A	334-396-0025	MAPLESVAL AL	1500 0	00	00	00
FEB 06	06:22 P	334-419-1445	INCOMING CL	5000 P	00	00	00
FEB 07	06:41 A	334-396-0025	MAPLESVAL AL	1500 0	00	00	00
FEB 07	06:41 A	334-419-1445	INCOMING CL	8000 0	00	00	00
FEB 07	06:53 P	334-404-0025	ENTERPRISE AL	1500 P	00	00	00
FEB 08	06:39 P	334-419-1445	INCOMING CL	3100 P	00	00	00
FEB 10	01:42 P	334-419-0267	SELMA CEL AL	1500 0	00	00	00
FEB 10	01:43 P	205-458-6157	BIRMGHAM 1 AL	1500 0	00	00	00
FEB 10	01:41 P	334-396-0025	MAPLESVAL AL	4000 0	00	00	00
FEB 10	02:01 P	334-396-0025	MAPLESVAL AL	1500 0	00	00	00
FEB 10	02:34 P	334-419-1415	SELMA CEL AL	1500 0	00	00	00
FEB 10	04:25 P	334-419-1415	SELMA CEL AL	1500 0	00	00	00
FEB 10	06:28 P	334-419-1445	INCOMING CL	1500 0	00	00	00
FEB 10	04:17 P	334-419-1445	INCOMING CL	4000 0	00	00	00
FEB 12	05:50 P	334-397-0722	ADVERTISING 1 AL	1500 P	00	00	00
FEB 12	06:10 P	334-419-1445	INCOMING CL	1500 P	00	00	00
FEB 12	06:11 P	334-391-2722	ADVERTISING 1 AL	1500 P	00	00	00
FEB 12	06:08 A	334-419-1445	INCOMING CL	4000 0	00	00	00
FEB 13	06:29 P	334-396-0025	INCOMING CL	3000 P	00	00	00
FEB 13	06:27 P	205-393-6074	BIRMGHAM 1 AL	800 P	00	00	00
FEB 14	06:06 A	334-419-1445	MAPLESVAL AL	1500 P	00	00	00
FEB 14	06:11 A	334-419-1445	INCOMING CL	2000 P	00	00	00
FEB 16	07:35 P	334-397-0722	ADVERTISING 1 AL	1500 P	00	00	00
FEB 16	08:31 P	334-419-1445	INCOMING CL	1500 P	00	00	00
FEB 16	08:41 P	334-366-0025	ENTERPRISE AL	1500 P	00	00	00
FEB 16	08:10 P	334-396-0025	MAPLESVAL AL	1500 P	00	00	00
FEB 16	06:52 P	334-419-1445	INCOMING CL	1500 P	00	00	00
FEB 16	06:16 P	334-404-0025	ENTERPRISE AL	1500 P	00	00	00
FEB 16	06:18 P	334-366-0076	MAPLESVAL AL	200 P	00	00	00
FEB 17	06:03 A	334-419-1445	INCOMING CL	500 0	00	00	00
FEB 17	06:06 P	334-419-1445	INCOMING CL	1500 0	00	00	00
FEB 17	06:07 P	334-419-1445	INCOMING CL	1500 0	00	00	00

[illegible]

Detail for LEON 334							Cat Costs	
Date	Time	Member Carded	Destination/Corp	Airline	Period	Altitude	ETD/TA	Total
Edmond Ave Detail (Continued)								
FEB 17	05:30 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 17	05:40 P	334-419-1415	INCOMING CL		100 0	.00	.00	.00
FEB 17	05:50 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 18	06:10 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 18	06:20 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 18	06:30 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	06:40 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	06:50 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	07:00 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	07:10 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	07:20 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	07:30 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	07:40 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	07:50 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	08:00 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	08:10 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	08:20 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	08:30 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	08:40 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	08:50 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	09:00 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	09:10 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	09:20 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	09:30 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	09:40 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	09:50 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	10:00 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	10:10 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	10:20 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	10:30 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	10:40 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	10:50 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	11:00 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	11:10 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	11:20 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	11:30 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	11:40 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	11:50 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	12:00 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	12:10 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	12:20 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	12:30 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	12:40 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00
FEB 19	12:50 P	334-419-1415	INCOMING CL		400 0	.00	.00	.00

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Account Number
Bill Date
Invoice Number

03/06/07

Detail for LEON 334-419-1445 (continued)

Date	From	Month/Year	Description/CL	Amount	Period	Amount	Cap Cost	Perf
Extended Area Detail (continued)								
MAR 01	05:01 P	334-369-0075	MAPLESVL AL	4.00	P	.00	.00	.00
MAR 03	04:19 A	334-464-6245	ENTERPRISE AL	1.00	O	.00	.00	.00
MAR 08	06:56 P	334-369-0075	MAPLESVL AL	1.00	O	.00	.00	.00
MAR 09	06:40 P	334-419-1445	INCOMING CL	1.00	O	.00	.00	.00
MAR 09	06:51 P	334-464-6245	ENTERPRISE AL	1.00	O	.00	.00	.00
MAR 09	06:57 P	334-369-0075	MAPLESVL AL	2.00	O	.00	.00	.00
MAR 09	06:58 P	334-464-6245	ENTERPRISE AL	1.00	O	.00	.00	.00
PERSARCOLA								
MAR 03	05:40 A	334-419-1445	INCOMING CL	1.00	O	5.00	5.00	5.00
AL Bimlin								
FEB 12	05:10 P	334-419-1445	INCOMING CL	1.00	P	9.00	9.00	9.00
FEB 16	06:11 P	334-419-1445	INCOMING CL	1.00	P	.00	.00	.00
FEB 16	06:57 P	334-419-1445	INCOMING CL	1.00	O	.00	.00	.00
AL Montgo								
FEB 12	05:09 P	334-464-6245	ENTERPRISE AL	5.00	P	5.00	5.00	5.00
FEB 12	05:09 P	334-419-1445	INCOMING CL	1.00	P	.00	.00	.00
FEB 16	06:58 P	334-464-6245	ENTERPRISE AL	1.00	O	.00	.00	.00
FEB 20	06:43 P	334-464-6245	ENTERPRISE AL	2.00	P	.00	.00	.00
FEB 21	06:50 P	334-369-2722	INCOMING CL	1.00	P	.00	.00	.00
Total Extended Area Detail				422.00		6.00	6.00	6.00
Total of All Details						6.00	6.00	6.00

Legend P = Peak Minutes O = Off Peak Minutes CF = Call Forwarded Call 1,025 KB = 1 MB

JAMES ALLEN BROOKSHIRE

1	IN THE UNITED STATES DISTRICT COURT	1	INDEX
2	FOR THE MIDDLE DISTRICT OF ALABAMA	2	EXAMINATION BY: PAGE NUMBER
3	NORTHERN DIVISION	3	Mr. Kilborn.....5-177
4	CASE NO.: 2:07cv00306-MHT-CSC	4	Mr. Johnson.....177-182
5		5	Mr. Kilborn.....182-186
6	JERRY LEON DEES, JR.,	6	Mr. Johnson.....186
7	Plaintiff,	7	
8	V.	8	EXHIBITS:
9	HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC and	9	Plaintiff's Exhibit 13.....12
10	HYUNDAI MOTOR AMERICA, INC.,	10	(two handwritten statements)
11	Defendants.	11	Plaintiff's Exhibit 14.....33
12		12	(employment application)
13	STIPULATIONS	13	Plaintiff's Exhibit 15.....38
14		14	(Team Member Handbook)
15		15	Plaintiff's Exhibit 16.....98
16	IT IS STIPULATED AND AGREED by and	16	(Team Relations Memo)
17	between the parties, through their respective	17	
18	counsel, that the deposition of JAMES ALLEN	18	
19	BROOKSHIRE may be taken before STACEY L.	19	
20	JOHNSON, Commissioner, at the Marriott	20	
21	Prattville at Capitol Hill, 2500 Legends Circle,	21	
22	Prattville, Alabama, on the 29th day of	22	
23	November, 2007.	23	
	1		3
1	IT IS FURTHER STIPULATED AND AGREED	1	APPEARANCES
2	that the signature to and the reading of the	2	FOR THE PLAINTIFF, JERRY LEON DEES, JR.:
3	deposition by the witness is hereby waived, the	3	KILBORN, ROEBUCK & McDONALD
4	deposition to have the same force and effect as	3	Jeffrey R. Sport
5	if full compliance had been had with all laws	4	(SPORJ5390)
6	and rules of Court relating to the taking of	4	jeff.sport@sportlaw.us
7	depositions.	5	
8	IT IS FURTHER STIPULATED AND AGREED	5	Vincent F. Kilborn, III
9	that it shall not be necessary for any	6	(KILBV4484)
10	objections to be made by counsel to any	6	1810 Old Government Street
11	questions except as to form or leading	7	Mobile, Alabama 36606
12	questions, and that counsel for the parties may	7	(251) 479-9010
13	make objections and assign grounds at the time	8	
14	of trial, or at the time said deposition is	9	FOR THE DEFENDANTS, HYUNDAI MOTOR MANUFACTURING
15	offered in evidence, or prior thereto.	10	ALABAMA, LLC and HYUNDAI MOTOR AMERICA, INC.:
16	IT IS FURTHER STIPULATED AND AGREED	11	OGLETREE, DEAKINS, NASH, SMOAK
17	that the notice of filing of the deposition by	11	& STEWART, P.C.
18	the Commissioner is waived.	12	Matthew K. Johnson
19		12	P. O. Box 2757
20		13	Greenville, South Carolina 29602
21		13	
22		14	HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC
23		14	Christopher N. Smith
	2	15	chrissmith@hmmausa.com
		15	700 Hyundai Boulevard
		16	Montgomery, Alabama 36105
		16	(334) 387-8057
		17	
		18	
		19	
		20	
		21	
		22	
		23	
			4

JAMES ALLEN BROOKSHIRE

<p>1 I, STACEY L. JOHNSON, a CCR of Deatsville, 2 Alabama, and Notary Public for the State of 3 Alabama at Large, acting as Commissioner, 4 certify that on this date, as provided by the 5 Federal Rules of Civil Procedure and the 6 foregoing stipulation of counsel, there came 7 before me at 2500 Legends Circle, Prattville, 8 Alabama, beginning at 9:25 a.m., JAMES ALLEN 9 BROOKSHIRE, witness in the above cause, for oral 10 examination, whereupon the following proceedings 11 were had: 12 JAMES ALLEN BROOKSHIRE, 13 the witness, after having been first duly sworn 14 to speak the truth, the whole truth, and nothing 15 but the truth, testified as follows: 16 EXAMINATION 17 BY MR. KILBORN: 18 Q State your full name, Mr. Brookshire. 19 A James Allen Brookshire. 20 Q How old are you? 21 A 35. 22 Q Are you married? 23 A Yes, sir.</p>	<p>1 Q Well, I'm going to let that question 2 stand. What is your current employment status? 3 A I'm employed if that's... 4 Q All right. You're employed? 5 A Yeah. 6 Q How long have you been employed? 7 A I've been working at Hyundai since 8 August of '05. 9 Q So you've been employed by -- we'll 10 call it HMMA? 11 A Yes, sir. 12 Q Hyundai Motor Manufacturing? 13 A Yes, sir. 14 Q Since August of 2005? 15 A Yes, sir. 16 Q And what is your current job title? 17 A Stamping Production Manager. 18 Q What is that? What are your job duties 19 as Stamping Production Manager? 20 A I oversee all the day-to-day operations 21 in the Stamping Shop, whether it be safety, 22 quality, tool and die, scheduling, and any HR 23 Team Member concerns or Team Relations problems.</p>
<p>1 Q Any children? 2 A Two of my own and two stepchildren. 3 Q And just for background information, 4 how old are your own children? 5 A My little one just turned seven months 6 and the other one is 19 months. 7 Q Seven months and 19 months? 8 A Driving my wife nuts. 9 Q Okay. And your wife's name? 10 A Stephanie Lynn Brookshire. 11 Q And where do you live? 12 A Where did I live or where do I live 13 currently? 14 Q Where do you live currently? 15 A 1048 East Poplar Street here in 16 Prattville. 17 Q Are you currently employed? 18 A Yes, sir. 19 Q By who? 20 A Hyundai Motor Manufacturing. 21 Q What's your current employment status? 22 A What do you mean by that? My 23 position?</p>	<p>1 Q Safety, quality? 2 A Production. 3 Q Production. 4 A Scheduling, tool and die, and 5 day-to-day personnel Team Member issues or Team 6 Relations problems. 7 Q Do you have a work schedule? 8 A The start time and stop time? 9 Q Right. 10 A I start at 5:45 in the morning and 11 usually finish up about 5:30 in the evening. 12 Q And do you have a lawyer here today? 13 A Yes, I do. 14 Q Who is your lawyer? 15 A Matt and our company lawyer, Chris. 16 Q And what are your lawyers' last names? 17 A Chris' last name is Smith. Matt, I'm 18 rusty on that. 19 Q What's your other lawyer's last name? 20 A I'm not sure. 21 Q So you've got one lawyer here you know 22 his real name and one lawyer here you only know 23 his first name?</p>

JAMES ALLEN BROOKSHIRE

1 A That's correct.

2 **Q And when did the lawyer that you've**
3 **identified as Matt become your lawyer?**

4 A His official start date with the case,
5 that was back -- I'm trying to remember the
6 first encounter I had. That was probably back
7 in April, April time frame.

8 **Q And how about the lawyer that you've**
9 **identified as Chris Smith? When did he become**
10 **your lawyer?**

11 A He's been part of our legal counsel
12 since probably at least about a year I've known
13 him.

14 **Q Well, I don't want to know just how**
15 **long he's been legal counsel. I want to know**
16 **how long has Chris Smith been your lawyer.**

17 MR. JOHNSON: Just for the Record,
18 object to the form. I don't see the relevance
19 of asking when Chris Smith's start date with
20 HMMA was.

21 MR. KILBORN: I don't want his start
22 date. I want to know when Chris Smith became
23 Jim Brookshire's lawyer.

1 and your explanation for asking it, I'll
2 instruct him not to answer. And he's stated he
3 will follow. However, please understand that
4 I'm willing to reconsider if you're willing to
5 give me some reason to do so.

6 MR. KILBORN: The reason I think it is
7 relevant and discoverable is because of the
8 Federal Rules of Civil Procedure. But let's
9 move on from that.

10 **Q What did you do to prepare for your**
11 **deposition today?**

12 A I had just met with my legal counsel
13 yesterday and -- to discuss when the time was I
14 was supposed to appear here today and what it
15 was in regards to.

16 **Q Okay. Did you review any documents to**
17 **prepare for your deposition?**

18 A Yes, sir.

19 **Q What documents did you review?**

20 A The documents that I had signed back, I
21 believe, in the April time frame that -- the
22 statements I had made in regards to Mr. Dees.

23 **Q Let's see if we can't identify those.**

1 MR. JOHNSON: And obviously that would
2 be attorney-client privilege.

3 MR. KILBORN: Not today it would not
4 be.

5 MR. JOHNSON: When Chris became
6 involved in representing Mr. Brookshire -- the
7 way you phrased the question -- would certainly
8 be.

9 MR. KILBORN: Well, you can instruct
10 him not to answer.

11 MR. JOHNSON: I instruct you not to
12 answer that.

13 **Q Are you going to follow your lawyer's**
14 **instructions?**

15 A Yes, sir.

16 **Q And you're going to refuse to tell me**
17 **the date that Mr. Chris Smith became your**
18 **lawyer; is that right?**

19 A Yes, sir.

20 MR. JOHNSON: I mean, Mr. Kilborn, if
21 you'll explain to me why it's relevant and
22 necessary, I'm certainly willing to reconsider,
23 but based on the way you've asked the question

1
2 (Whereupon, Plaintiff's Exhibit
3 Number 13 was marked for identification
4 and copy of same is attached hereto.)
5

6 **Q Mr. Brookshire, take a look at what**
7 **I've marked as Exhibit 13, which is made up of**
8 **two pages and they've got Bates numbers at the**
9 **bottom. See these little numbers down here at**
10 **the bottom, Dees V HMMA 00037 and 38?**

11 A Yes, sir.

12 **Q So just to distinguish between the two**
13 **I'll call it Plaintiff's Exhibit 13. The first**
14 **one will be 37 and the second one will be 38.**
15 **Are those the documents that you reviewed?**

16 A Yes, sir.

17 **Q And are these your statements?**

18 A Yes, sir.

19 **Q And you reviewed them to prepare for**
20 **your deposition?**

21 A (Witness nods head.)

22 **Q You have to say yes or no.**

23 A Yes.

JAMES ALLEN BROOKSHIRE

1 Q Any other documents that you reviewed?	1 had told my supervisor about it the next day
2 A No.	2 because I was working night shift when it
3 Q And take a look at Exhibit 13, the	3 happened. My senior manager was sleeping, so
4 first document, Bates number 37. Whose	4 I'm not going to wake him up in the middle of
5 handwriting is that in?	5 the night to tell him something like that. I
6 A The signature at the bottom or the	6 just reported it to Mr. Dees' direct supervisor,
7 handwriting itself?	7 as well as my own, the next day.
8 Q Is that your signature?	8 Q Your supervisor was Kevin Hughes?
9 A Yes, that's my signature at the bottom.	9 A No. That's the team leader for
10 Q And it's dated February 15, '07?	10 Maintenance. My direct supervisor is Craig
11 A Yes, sir.	11 Stapely.
12 Q And the second document, Bates number	12 Q Craig Stapler?
13 38, is that your signature?	13 A Stapely.
14 A Yes, sir.	14 Q What is his job title?
15 Q And the date is four days later?	15 A He's senior manager of Stamping
16 A Yeah.	16 Operations.
17 Q Who's handwriting is that?	17 Q And did you report anything to
18 A Team Relations rep Will Ware.	18 Mr. Stapler (sic) or your Team Leader?
19 Q What's the name?	19 A I just reported the incident to
20 A Team Relations rep William Ware.	20 Mr. Stapely the next day and reported it to
21 Q Did you write up one yourself?	21 Leon's direct supervisor -- salaried supervisor,
22 A No.	22 Craig Prater. The team leader that I spoke of
23 Q And tell me how it came to pass that	23 on night shift is the team leader over Leon
13	15
1 you signed the first -- that you had this first	1 Dees, Kevin Hughes.
2 interview, Bates number 37.	2 Q Kevin Hughes?
3 A The one -- the issue was brought about	3 A Yeah.
4 during a time frame in which Leon's supervisor,	4 Q And so the first person you reported
5 Mr. Prater, had asked me about a problem that I	5 this incident to was Mr. Hughes?
6 had had the night before. I told the Team	6 A Yes, sir.
7 Leader on the night shift -- because I was	7 Q And did you report it verbally or in
8 currently on night shift at the time covering	8 writing?
9 because we had an assistant manager that had	9 A Verbally.
10 resigned and went to work for another company,	10 Q And what did you tell him?
11 and my senior manager had moved me to night	11 A I told him I'd caught one of his
12 shift to cover for his position. And I had a	12 Maintenance Team Members up there by the contro
13 problem there with Mr. Dees in which he was	13 panel upstairs on the third floor in the SOP
14 caught in a position of sleeping, and I had made	14 area sleeping.
15 note to the Team Leader and also informed his	15 Q What's SOP stand for?
16 assistant manager the next day on day shift.	16 A Side outer panel area. SOP, side outer
17 Q We'll get into that in detail. Who did	17 panel.
18 you first report that to?	18 Q And why did you report the sleeping
19 A Reported it to the Team Leader.	19 incident?
20 Q Who was that?	20 A Because that's an unbecoming nature of
21 A Kevin Hughes.	21 conduct or action of a Team Member to be in a
22 Q Was the Team Leader your supervisor?	22 concealed area sleeping during working time.
23 A Team Leader is not my supervisor. I	23 Q What's wrong with sleeping during
14	16

JAMES ALLEN BROOKSHIRE

<p>1 working time?</p> <p>2 A It's not permissible.</p> <p>3 Q Why not?</p> <p>4 A It's against policy.</p> <p>5 Q What's that policy designed to prevent?</p> <p>6 A That's unbecoming performance of a Team</p> <p>7 Member. They're not doing their job.</p> <p>8 Q Not doing their job?</p> <p>9 A (Witness nods head.)</p> <p>10 Q You have to answer yes or no. Is that</p> <p>11 a yes?</p> <p>12 A He wasn't doing his job.</p> <p>13 Q You nodded and she can't get nods.</p> <p>14 You have to say yes or no.</p> <p>15 A Yes. He wasn't doing his job.</p> <p>16 Q Wasn't doing his job. Was that a</p> <p>17 safety issue?</p> <p>18 A Could be.</p> <p>19 Q How could it be?</p> <p>20 A Well, if he'd fall off the -- fall off</p> <p>21 the chair onto the mezzanine or the catwalk</p> <p>22 floor, he could injure himself. Possibly he</p> <p>23 could fall in the position -- because upstairs</p> <p style="text-align: right;">17</p>	<p>1 '05. During our two-week orientation, we had</p> <p>2 Safety members of management come in there and</p> <p>3 train us on basic fundamentals in operations of</p> <p>4 the automation in the plant.</p> <p>5 Q When myself and Jeff Sport were there</p> <p>6 yesterday with the two Hyundai attorneys, I</p> <p>7 noticed we had to wear ear plugs, safety</p> <p>8 goggles, Kevlar sleeves, and hard hats. I got</p> <p>9 the feeling it was sort of a dangerous place to</p> <p>10 be. Is that a good description of that plant?</p> <p>11 MR. JOHNSON: Object to the form.</p> <p>12 A Depending on which area you're in in</p> <p>13 the plant deems which appropriate PPE is</p> <p>14 necessary to wear in that department. Our</p> <p>15 department, you're exposed to a lot of outer</p> <p>16 surface metal, sheet metal, which we're in a</p> <p>17 higher chance of getting lacerations or getting</p> <p>18 cuts. And it's always been a standard to wear</p> <p>19 hard hats in the area. Each area is designated</p> <p>20 to wear certain parts of PPE. Just like in GA</p> <p>21 all you have to wear out there is safety shoes,</p> <p>22 safety shoes and safety glasses.</p> <p>23 Q Is the part of the plant where you were</p> <p style="text-align: right;">19</p>
<p>1 we have trolleys carrying panels around. And if</p> <p>2 he wasn't watching what he was doing or fell in</p> <p>3 a particular manner, maybe had a bad dream or</p> <p>4 something like that, if he got up, he could get</p> <p>5 seriously cut or injured by moving trolleys.</p> <p>6 Q And is safety one of the things you're</p> <p>7 in charge of?</p> <p>8 A Yes, sir.</p> <p>9 Q Have you had safety training?</p> <p>10 A Depends on what training you're talking</p> <p>11 about.</p> <p>12 Q Well, safety in regard to being in the</p> <p>13 plant.</p> <p>14 A I've had lock-out/tag-out training.</p> <p>15 Q What's that?</p> <p>16 A That's where if you enter any area</p> <p>17 where operational energy or any potential</p> <p>18 hazards are in your working area that you can</p> <p>19 disable that energy source.</p> <p>20 Q Any other safety training?</p> <p>21 A Not there at that facility. Just a</p> <p>22 basic -- excuse me. We had basic introduction</p> <p>23 to safety when I first started there in August</p> <p style="text-align: right;">18</p>	<p>1 the night we're talking about -- is that called</p> <p>2 the Stamping area?</p> <p>3 A Yes.</p> <p>4 Q And the two large stamping presses</p> <p>5 stamp out metal sheets --</p> <p>6 A Yes, sir.</p> <p>7 Q -- into car parts?</p> <p>8 A Yes, sir.</p> <p>9 Q And they use it with what -- I mean,</p> <p>10 they accomplish it by hydraulic force?</p> <p>11 A They're actually pneumatics and</p> <p>12 mechanically driven presses.</p> <p>13 Q So it's a -- it's not a cutting with,</p> <p>14 say, a laser torch. It's a stamping with brute</p> <p>15 force?</p> <p>16 A Yeah. 5400 ton IHI stamping presses.</p> <p>17 Q Did you say tons?</p> <p>18 A Yeah, 5400 ton presses.</p> <p>19 Q Not pounds?</p> <p>20 A Right. Correct.</p> <p>21 Q And when that 5400 tons stamps out a</p> <p>22 part, I imagine that's noisy, isn't it?</p> <p>23 A Yeah.</p> <p style="text-align: right;">20</p>

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<p>1 Q Do you in that area -- we call it the</p> <p>2 Stamping Plant; is that correct?</p> <p>3 A Yes.</p> <p>4 Q The Stamping Plant, what safety gear do</p> <p>5 you wear?</p> <p>6 A I wear sleeves, gloves, eye protection,</p> <p>7 bump cap. Safety has just designated in the</p> <p>8 last six months that we need to wear hearing</p> <p>9 protection and steel-toe shoes.</p> <p>10 Q So at the time of the Dees incident,</p> <p>11 you wore helmets, Kevlar sleeves, gloves?</p> <p>12 A Gloves if you're handling material, the</p> <p>13 steel material.</p> <p>14 Q All right. Eye protection?</p> <p>15 A Yes, sir.</p> <p>16 Q But not necessarily ear plugs?</p> <p>17 A Not at that time.</p> <p>18 Q How about steel-toe shoes?</p> <p>19 A Yes, sir.</p> <p>20 Q And you've got on steel-toe shoes now,</p> <p>21 don't you?</p> <p>22 A Yes, I do.</p> <p>23 Q And that safety equipment is basically</p> <p style="text-align: right;">21</p>	<p>1 A Yes.</p> <p>2 Q And welded down on there?</p> <p>3 A Yes.</p> <p>4 Q And I noticed that in walking across</p> <p>5 the mesh it was recommended that you walk on the</p> <p>6 angle iron, not on the mesh itself. Is that a</p> <p>7 good practice?</p> <p>8 A We walk across it. We've been</p> <p>9 instructed that it's okay to walk across it.</p> <p>10 Q Okay. And then the way to get to the</p> <p>11 different levels is up metal stairs?</p> <p>12 A Yes, sir.</p> <p>13 Q And the area where you describe where</p> <p>14 Mr. Dees was sleeping, the trolleys, are those</p> <p>15 the devices that sort of hang from the ceiling</p> <p>16 and parts are carried around on some kind of</p> <p>17 conveyor system?</p> <p>18 A Yes.</p> <p>19 Q You call those trolleys?</p> <p>20 A Yes.</p> <p>21 Q And the panel, the SOP panel, why is</p> <p>22 that -- what does that do?</p> <p>23 A The SOP panel is the panel that's hung</p> <p style="text-align: right;">23</p>
<p>1 for the protection of the individual who is in</p> <p>2 the plant?</p> <p>3 A Correct.</p> <p>4 Q And I also noticed in looking at the</p> <p>5 plant yesterday that it's a very large building,</p> <p>6 isn't it?</p> <p>7 A Correct.</p> <p>8 Q And the levels in the building are</p> <p>9 floored with what I would call catwalks. Is</p> <p>10 that a good name for that?</p> <p>11 A Yeah, that's appropriate.</p> <p>12 Q And a catwalk would be a metal grate?</p> <p>13 A Mesh floor.</p> <p>14 Q Mesh floor. And the mesh is a steel</p> <p>15 mesh, isn't it?</p> <p>16 A Correct.</p> <p>17 Q Almost like a wire, except very heavy</p> <p>18 gauge metal?</p> <p>19 A Yes, sir.</p> <p>20 Q And the mesh is put down on -- what do</p> <p>21 you call them?</p> <p>22 A Angle.</p> <p>23 Q Angle iron?</p> <p style="text-align: right;">22</p>	<p>1 on the trolley.</p> <p>2 Q That's hung on the trolley?</p> <p>3 A By the robots in the automation on the</p> <p>4 back of the press line.</p> <p>5 Q The panels that I'm talking about would</p> <p>6 be the metal panel where Mr. Dees was located.</p> <p>7 A Oh, the control panel, electrical</p> <p>8 control panel.</p> <p>9 Q That's different than the SOP?</p> <p>10 A Yeah. You've got three levels. You've</p> <p>11 got the base floor, you've got the second level,</p> <p>12 which they do the rework for the SOP panels</p> <p>13 where they have the repair booth and do</p> <p>14 inspection of those panels, and then the third</p> <p>15 floor is actually the storage system for the SOP</p> <p>16 panels.</p> <p>17 Q So the SOP panels are part of the</p> <p>18 automobile eventually?</p> <p>19 A Yeah. That's side outer, the big sides</p> <p>20 of the car.</p> <p>21 Q Okay. So what I want to talk about is</p> <p>22 the control panel where Mr. Dees was.</p> <p>23 A Electrical control panel.</p> <p style="text-align: right;">24</p>

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<p>1 Q What does that control?</p> <p>2 A That's the -- I guess you'd -- in base</p> <p>3 form, you'd say that's the brain behind the</p> <p>4 operation of the SOP system. It's where they go</p> <p>5 to check faults and reset faults.</p> <p>6 Q What's a fault?</p> <p>7 A If they have any kind of fault in the</p> <p>8 system.</p> <p>9 Q Such as?</p> <p>10 A Maybe a trolley quit, maybe there's a</p> <p>11 low voltage fault on one of the trolley boxes</p> <p>12 and they've got to search for it. Then the</p> <p>13 fault -- the system itself will capture the</p> <p>14 fault and then the system will send out to a</p> <p>15 touch screen and prompt a fault to let</p> <p>16 Maintenance know that they need to fix the</p> <p>17 problem.</p> <p>18 Q And that touch screen is inside the</p> <p>19 control panel?</p> <p>20 A There's one down on the floor between</p> <p>21 the presses.</p> <p>22 Q Well, how does it show up on the</p> <p>23 control panel if there's a fault?</p> <p style="text-align: right;">25</p>	<p>1 Q So was Mr. Dees in Maintenance?</p> <p>2 A Yes, he was.</p> <p>3 Q Would he have to know how to use that</p> <p>4 control panel?</p> <p>5 A He should.</p> <p>6 Q Part of his job?</p> <p>7 A He should, yeah.</p> <p>8 Q Going back to Exhibit 13, the first</p> <p>9 page, Bates number 37, is this statement that</p> <p>10 you signed true and correct?</p> <p>11 A Yeah, the best of my knowledge.</p> <p>12 Q Okay. You don't want to make any</p> <p>13 changes in it, do you?</p> <p>14 A No.</p> <p>15 Q And the second page of that exhibit,</p> <p>16 Bates number 38, is that also true and correct?</p> <p>17 A Yes.</p> <p>18 Q Do you want to make any changes in</p> <p>19 that?</p> <p>20 A No.</p> <p>21 Q Outside of these two documents, there's</p> <p>22 no other documents you reviewed?</p> <p>23 A No.</p> <p style="text-align: right;">27</p>
<p>1 A Because you can look in the control</p> <p>2 panel and you've got PLC processors in there and</p> <p>3 you'll have input and output analogue blocks.</p> <p>4 And they'll have certain bits that will be</p> <p>5 toggled that you can look it up. Maintenance</p> <p>6 typically has books up there, and they can look</p> <p>7 at which bit light is toggled on on the input or</p> <p>8 output card, and that will indicate to them what</p> <p>9 the fault is.</p> <p>10 Q This may be a simplification, but I</p> <p>11 know on cars nowadays, unlike when I was growing</p> <p>12 up, you can go into your car dealership and they</p> <p>13 can plug in a computer and they can tell what's</p> <p>14 wrong with the car with the computer. Is that a</p> <p>15 simplified way of what this control panel can</p> <p>16 tell you?</p> <p>17 A Yeah.</p> <p>18 Q You can locate where the fault is by --</p> <p>19 A Yeah, they can figure out -- it will</p> <p>20 give them basic error coding, give them an</p> <p>21 understanding of what's wrong. It doesn't tell</p> <p>22 them exactly where the problem is at, but it</p> <p>23 gives them an idea of what's wrong.</p> <p style="text-align: right;">26</p>	<p>1 Q What was the reason that the second</p> <p>2 statement was taken four days later on Bates</p> <p>3 number 38?</p> <p>4 A There was two situations where -- with</p> <p>5 Team Relations there's an interview with Kevin,</p> <p>6 then there was another interview later. And</p> <p>7 they just wanted to reassure that the</p> <p>8 understanding was the same both times.</p> <p>9 Q Who is they?</p> <p>10 A Team relations.</p> <p>11 Q I mean who? What human being?</p> <p>12 A William Ware is the one that took the</p> <p>13 statements, but whoever he reports to, Audie</p> <p>14 Swegman and Rob Clevenger and those guys.</p> <p>15 Q So what were you told when you --</p> <p>16 before you did the second interview on February</p> <p>17 19, '07?</p> <p>18 A That -- I wasn't really told anything.</p> <p>19 They just told me that we needed to make sure</p> <p>20 that there was a clear understanding of what</p> <p>21 happened on this night of this incident.</p> <p>22 Q Well, is this the first page, Bates</p> <p>23 number 37 -- that's not a clear understanding?</p> <p style="text-align: right;">28</p>

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<p>1 A I thought it was.</p> <p>2 Q So you didn't know why the second one</p> <p>3 was necessary?</p> <p>4 A I didn't understand why they needed</p> <p>5 another one, but whatever they needed, I told</p> <p>6 them, you know, I would sign off on it.</p> <p>7 Whatever information they deemed to make things</p> <p>8 gel up and what was needed, I was willing to do</p> <p>9 what they needed to do.</p> <p>10 Q And why do you think they needed to</p> <p>11 make things gel up?</p> <p>12 A Make sure my story is consistent to be</p> <p>13 fair to the Team Member, because that's Team</p> <p>14 Relations' job to make sure things are fair.</p> <p>15 Q Fair to Mr. Dees?</p> <p>16 A Yes.</p> <p>17 Q Well, you were fair to Mr. Dees on the</p> <p>18 first statement, number 37, weren't you?</p> <p>19 A That's what I seen.</p> <p>20 Q Was there anything -- you thought that</p> <p>21 was complete and accurate, number 37, didn't</p> <p>22 you?</p> <p>23 MR. JOHNSON: Object to the form.</p> <p style="text-align: right;">29</p>	<p>1 Q You're not on drugs? You're not on</p> <p>2 alcohol? You don't have any mental problems</p> <p>3 now?</p> <p>4 A No. My wife tells me I'm nuts</p> <p>5 sometimes, but...</p> <p>6 Q Well, sometimes they're right and</p> <p>7 sometimes they're wrong. But outside of that?</p> <p>8 A No.</p> <p>9 Q On the night in question -- and I think</p> <p>10 that is the date of February 14th, according to</p> <p>11 Exhibit 13, number 37 -- how many people were</p> <p>12 you in charge of supervising?</p> <p>13 A On night shift at that time would have</p> <p>14 been approximately 30.</p> <p>15 Q And were the 30 people scattered around</p> <p>16 the Stamping Plant?</p> <p>17 A Yeah.</p> <p>18 Q And at that time, you were in charge of</p> <p>19 quality, safety, production, those type issues?</p> <p>20 A Yeah. In that position in that place</p> <p>21 when I was working night shift, I was actually</p> <p>22 filling in for the responsibility of the</p> <p>23 assistant manager. When I'm actually in my full</p> <p style="text-align: right;">31</p>
<p>1 A To the best of my knowledge.</p> <p>2 Q Okay. Did Mr. Ware or anybody else</p> <p>3 tell you why it was necessary to make things gel</p> <p>4 up?</p> <p>5 A Me using the term gel up was my</p> <p>6 terminology.</p> <p>7 Q I understand. What did you mean by</p> <p>8 that term?</p> <p>9 A Make sure the story is consistent for</p> <p>10 fairness to the team member.</p> <p>11 Q So fairness to the Team Member would be</p> <p>12 a paramount? Fairness to Mr. Dees would be a</p> <p>13 paramount concern?</p> <p>14 A To team relations and for HMMA Team</p> <p>15 Members in general. People need to be treated</p> <p>16 fair and equal.</p> <p>17 Q Right. And you're not on any</p> <p>18 medication or anything now, are you?</p> <p>19 A No. I've got asthma. Sometimes I take</p> <p>20 albuterol.</p> <p>21 Q All right. Well, there's no reason why</p> <p>22 you cannot testify truthfully today?</p> <p>23 A Correct.</p> <p style="text-align: right;">30</p>	<p>1 responsibility is when I'm on day shift as the</p> <p>2 manager where I'm responsible for both shifts.</p> <p>3 At that time, I was filling in that position for</p> <p>4 assistant manager on night shift.</p> <p>5 Q Who was that?</p> <p>6 A Mr. Rick Harvey, which he resigned and</p> <p>7 moved to a job out in Arizona.</p> <p>8 Q And do you know a Mr. Prater?</p> <p>9 A Yeah, I know Mr. Prater.</p> <p>10 Q What was his job that evening?</p> <p>11 A He was not there that time of night.</p> <p>12 He works day shift as assistant manager over</p> <p>13 Stamping Maintenance.</p> <p>14 Q All right. Was he Mr. Dees' usual</p> <p>15 superior or supervisor?</p> <p>16 A That was his usual supervisor, yes.</p> <p>17 Other than the fact of his Team Leader, Kevin</p> <p>18 Hughes, which he reports to on his shift.</p> <p>19 Q Were you given an orientation when you</p> <p>20 went to work for HMMA?</p> <p>21 A Yeah. Two-week orientation.</p> <p>22 Q What did that cover?</p> <p>23 A It covers benefits as far as your</p> <p style="text-align: right;">32</p>

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<p>1 dental, eye, health, and your different 2 coverages, deductible. You had an introduction 3 to Team Relations. You had an introduction to 4 all the heads of departments and what their 5 functions and responsibilities were for each 6 department. And then Safety and Payroll and 7 Team Relations.</p> <p>8 Q This was a two-week orientation? 9 A Yeah.</p> <p>10 Q And I'm going to -- your counsel has 11 given us your personnel file. I'm going to mark 12 that as Exhibit 14. Do you have access to your 13 personnel file? 14 A I guess I would. I mean, I've never 15 went up and asked them for anything. 16 17 (Whereupon, Plaintiff's Exhibit 18 Number 14 was marked for identification 19 and copy of same is attached hereto.) 20</p> <p>21 Q I'm going to mark the entire thing as 22 Exhibit 14. They've got some numbers at the 23 bottom of the page. We'll just refer to those</p> <p style="text-align: right;">33</p>	<p>1 257, it has a notice to applicant down at the 2 bottom of the page. Did you read that? 3 A The Applicant Notice? 4 Q Right. 5 A Yes, sir. 6 Q Do you know what that means? 7 A Yeah. 8 Q What does it mean? 9 A HMMA endorses the EEO requirements, 10 equal employment opportunities for people, and 11 doesn't place any discrimination on whatever 12 your status is in regards to your background. 13 Q All right. And then on the second 14 page, Bates number 257, about a third of the way 15 down, it says do you know of any reason why you 16 would not be able to perform the various 17 functions of the job you're seeking. See that? 18 A Yeah. 19 Q And you checked off no? 20 A Right. 21 Q Did you know what jobs you were seeking 22 at the time? 23 A At the time, I had had a recruiter that</p> <p style="text-align: right;">35</p>
<p>1 for easy reference. And your employment 2 application in there begins at number 257. 3 Would you turn to that? 4 A 257. Okay. 5 Q And I believe it goes from 257 to 260. 6 Would you check those four pages and tell me if 7 that's your employment application? 8 A (Witness reviews document.) Yeah. 9 Q That's it? 10 A Yeah. 11 Q And it looks like on Certification on 12 last page it says right above your signature -- 13 I'll just paraphrase. It just says everything 14 on here is true and correct. Would that be a 15 true statement? 16 A Yes, sir. 17 Q And then it also said any material 18 omissions and misstatements are grounds for 19 termination? 20 A Yeah. 21 Q You understood that? 22 A Yeah. 23 Q And then if you flip to the first page,</p> <p style="text-align: right;">34</p>	<p>1 contacted me. I had graduated with my Master's 2 Degree and I was interested in pursuing other 3 opportunities, because at the time, General 4 Motors was actually doing salary freezes, 5 overtime freezes and there really wasn't much 6 opportunity to pursue a better career, better 7 profession. So this recruiter contacted me and 8 disclosed a position opening to me at Hyundai. 9 And at that time, it was assistant manager 10 position open in the Stamping Weld Shop. And 11 after I went for the first interview, everything 12 went extremely well. I came in for the second 13 interview, and it went extremely well, also. 14 And they actually offered me the Stamping 15 Manager's position because of my background of 16 experience and the satisfaction of the 17 interviews. 18 Q And you were hired into that position? 19 A Yes, sir. 20 Q So you've held the same position from 21 start to now? 22 A Correct. 23 Q So you were actually hired into a</p> <p style="text-align: right;">36</p>

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<p>1 management position and still maintain that now?</p> <p>2 A Correct.</p> <p>3 Q And look at number 270. That's</p> <p>4 Acknowledgment of Sexual Harassment Prevention</p> <p>5 Training. It's got a checklist of things that</p> <p>6 you've received.</p> <p>7 A 270?</p> <p>8 Q 270. You signed that?</p> <p>9 A Correct.</p> <p>10 Q And it looks like, for instance, you</p> <p>11 viewed a videotape called Sexual Harassment.</p> <p>12 That's number 3.</p> <p>13 A Yeah.</p> <p>14 Q And you reviewed -- for instance,</p> <p>15 number 8, it says I have received and reviewed a</p> <p>16 copy of HMMA's Serious Misconduct Policy.</p> <p>17 A Yes.</p> <p>18 Q Do you know what the Serious Misconduct</p> <p>19 Policy is?</p> <p>20 A It depends on the circumstances of what</p> <p>21 the employee had done as far as the Serious</p> <p>22 Misconduct Policy applying to them. I don't</p> <p>23 have it memorized verbatim in my head.</p> <p style="text-align: right;">37</p>	<p>1 A Yeah.</p> <p>2 Q All right. Is there anything unclear</p> <p>3 about your testimony so far?</p> <p>4 A No.</p> <p>5 Q Now, Exhibit 15, is that a copy of a</p> <p>6 manual that you would have received, knowing</p> <p>7 that this may not be the exact piece of paper</p> <p>8 that you got?</p> <p>9 A Yeah, this is a Team Member Handbook</p> <p>10 that's been handed out to myself and all the</p> <p>11 Team Members in the plant.</p> <p>12 Q Do you still have your copy?</p> <p>13 A I handed it out to one of my assistant</p> <p>14 managers. He borrowed it right before I went on</p> <p>15 Thanksgiving holiday, and I'm not sure if he</p> <p>16 returned it because I haven't looked for it back</p> <p>17 on my desk.</p> <p>18 Q But you do have a copy when it's not</p> <p>19 loaned out to somebody else?</p> <p>20 A Yes.</p> <p>21 Q And you understand this is the rules</p> <p>22 and regulations of Hyundai with regard to the</p> <p>23 employees?</p> <p style="text-align: right;">39</p>
<p>1 (Whereupon, Plaintiff's Exhibit</p> <p>2 Number 15 was marked for identification</p> <p>3 and copy of same is attached hereto.)</p> <p>4</p> <p>5</p> <p>6 Q I'm going to mark Exhibit Number 15, a</p> <p>7 copy of a manual called Team Member Handbook,</p> <p>8 and have you take a look at that and see if that</p> <p>9 is something that you received and reviewed.</p> <p>10 A Yes, I have a copy of this.</p> <p>11 Q What did you write down there?</p> <p>12 A Exhibit number.</p> <p>13 Q Exhibit number?</p> <p>14 A Right.</p> <p>15 Q Can I see those notes you're writing</p> <p>16 down?</p> <p>17 A (Witness complied.)</p> <p>18 Q What's the purpose of you keeping your</p> <p>19 own notes in the deposition?</p> <p>20 A Clarity for my own self-purpose.</p> <p>21 Q What self-purpose would that be?</p> <p>22 A Clarity.</p> <p>23 Q For you?</p> <p style="text-align: right;">38</p>	<p>1 A Yes.</p> <p>2 Q And there's a section in here on</p> <p>3 serious misconduct, I believe, isn't it?</p> <p>4 A Yes, there is. It's under Disciplinary</p> <p>5 section.</p> <p>6 Q And take a look at page 36.</p> <p>7 MR. JOHNSON: Do y'all have an extra</p> <p>8 one?</p> <p>9 MR. KILBORN: I don't but I think it's</p> <p>10 produced.</p> <p>11 Q Serious misconduct starts at the bottom</p> <p>12 of 33 and you go over to page 34, and toward the</p> <p>13 middle and lower part of the document it's got</p> <p>14 listed below are some examples of activities</p> <p>15 that statute serious misconduct at HMMA. You</p> <p>16 see that?</p> <p>17 A Yes, sir.</p> <p>18 Q Are you familiar with those?</p> <p>19 A Like I say, I don't have all of them</p> <p>20 exactly memorized, but if I have something in</p> <p>21 question, that's why we have the handbook for a</p> <p>22 reference tool.</p> <p>23 Q Well, you had to read it and</p> <p style="text-align: right;">40</p>

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1 acknowledge what it said in the beginning,
 2 didn't you?
 3 A Correct.
 4 Q Did you have any questions about these
 5 rules?
 6 A No, sir.
 7 Q And serious misconduct can result in
 8 termination, can it not?
 9 A It can.
 10 Q Okay. All right. And, for instance,
 11 the first bullet point under the list it says
 12 serious and/or excessive violations of HMMA's
 13 attendance program. You see that?
 14 A Yes, sir.
 15 Q The second bullet point says serious
 16 and/or excessive violations of HMMA's
 17 performance standards. You see that?
 18 A Yes, sir.
 19 Q It goes on. It's got quite a few
 20 bullet points. Which of these bullet points did
 21 Mr. Dees violate?
 22 MR. JOHNSON: Object to the form of the
 23 question. Are you asking for -- if he knows for

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1 Q Okay.
 2 A The second or third one from the
 3 bottom.
 4 Q Okay. Which other one?
 5 A Deliberately using unsafe work
 6 practices that might seriously jeopardize the
 7 health and safety of the Team Member.
 8 Q How did Mr. Dees deliberately use
 9 unsafe work practice that might seriously
 10 jeopardize the health and safety of the Team
 11 Member or a fellow Team Member?
 12 A Jeopardizing his own health and safety
 13 by sleeping in an area that's considered
 14 dangerous.
 15 Q How is it considered dangerous?
 16 A Because of the moving panels. You have
 17 moving sheet steel that moves around the area.
 18 And being in a state of not being aware of your
 19 surroundings, he could easily put himself in a
 20 state of jeopardy to cut himself or get himself
 21 hurt.
 22 Q So your opinion is Mr. Dees
 23 deliberately put himself in a dangerous

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1 sure, or are you asking what his opinions are?
 2 MR. KILBORN: My question will just
 3 stand like it is.
 4 MR. JOHNSON: Okay. Object to the
 5 form.
 6 A (Witness reviews document.) Basically
 7 in the condition in which he was in the bullet
 8 insubordination, including with failing to
 9 perform assigned work and deliberately
 10 performing unsafe work practices.
 11 Q Why don't you just take this black felt
 12 pen or take your own pen there and just circle
 13 the ones that you saw Mr. Dees violate?
 14 A (Witness complied.)
 15 Q Would you put your initials and today's
 16 date by that?
 17 A (Witness complied.)
 18 Q All right. So we all know since we
 19 don't all have copies. Would you read for us
 20 both of those so we can markup our copies?
 21 A Insubordination, including refusing to
 22 perform assigned work or refusing to follow
 23 direction of HMMA. Deliberately --

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1 situation where he himself might get hurt?
 2 A Yes.
 3 Q Go back up to the one you marked first,
 4 insubordination. Tell me how Mr. Dees was
 5 guilty of insubordination as outlined in that
 6 bullet point.
 7 A He wasn't performing work. He was off
 8 his -- lunch period time off in a concealed area
 9 asleep.
 10 Q Okay. Concealed area?
 11 A That's not -- in a hidden area. That's
 12 not a trafficked area. There was no problems at
 13 the time with the SOP system.
 14 Q How did you know that?
 15 A Because I was up there.
 16 Q And that's why you were up there?
 17 A I was up there checking quality
 18 problems.
 19 Q Quality problems?
 20 A Yeah. Quality problems on the CM side
 21 outer panel.
 22 Q What were the quality problems you were
 23 checking?

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<p>1 A For wrinkles and splits on the panel.</p> <p>2 Q Did you have some suspicion that there</p> <p>3 were quality problems?</p> <p>4 A Yeah.</p> <p>5 Q What made that occur to you?</p> <p>6 A We got a call from the Quality</p> <p>7 Department, the Weld Shop, and they had told us</p> <p>8 they'd seen some problems with it. The other</p> <p>9 piece was we had the die back in the shop being</p> <p>10 worked on. We had to bring it back up. We ran</p> <p>11 very close to running the Body Shop out of</p> <p>12 parts. So we had to put the job back in the</p> <p>13 press quickly to get parts to the Weld Shop, and</p> <p>14 we had to check the quality on them quickly also</p> <p>15 to make sure we weren't going to jeopardize the</p> <p>16 customer in shutting down production at the Weld</p> <p>17 Shop.</p> <p>18 Q And do you agree with the fact that</p> <p>19 Mr. Dees should have been terminated for</p> <p>20 violating these two bullet points, Serious</p> <p>21 Misconduct Policies?</p> <p>22 MR. JOHNSON: Object to the form.</p> <p>23 A For any employee taking their own time</p> <p style="text-align: right;">45</p>	<p>1 Now, the part of it that I was not was</p> <p>2 not under the influence on HMMA property.</p> <p>3 Q Well, did you violate that policy you</p> <p>4 just read or not?</p> <p>5 A I don't actually know the policy of</p> <p>6 that, but I know I failed a urine exam when I</p> <p>7 went up to Medical after I had been cut. I had</p> <p>8 been cut through my glove when I was helping</p> <p>9 some Team Members pull some scrap out of the</p> <p>10 scrap shoot. I went to Medical to be treated</p> <p>11 for the laceration I received on my hand, and</p> <p>12 it's protocol for safety incidents to be drug</p> <p>13 tested.</p> <p>14 Q So you got caught with drugs?</p> <p>15 MR. JOHNSON: Object to the form.</p> <p>16 A I had shown up positive in the urine</p> <p>17 sample.</p> <p>18 Q But you didn't expect to be caught, did</p> <p>19 you?</p> <p>20 A I didn't think about it because of the</p> <p>21 time of when the incident happened I had been at</p> <p>22 a party and drinking alcohol.</p> <p>23 Q You got caught?</p> <p style="text-align: right;">47</p>
<p>1 and not being -- performing the regular job task</p> <p>2 and sleeping on the job, I do have a problem</p> <p>3 with that. I do believe that's a problem</p> <p>4 conflicting with company policy.</p> <p>5 Q So you believe he should have been</p> <p>6 terminated?</p> <p>7 A Yes.</p> <p>8 Q So you agree with that?</p> <p>9 A Yes.</p> <p>10 Q And how many of these serious</p> <p>11 misconduct policies on page 34 and 35 have you</p> <p>12 yourself violated?</p> <p>13 A One of them.</p> <p>14 Q Which one is that?</p> <p>15 A The use of -- use of illegal drugs.</p> <p>16 Q Would you read for us that willful</p> <p>17 misconduct that you yourself violated?</p> <p>18 A Use or possession, sale, transfer or</p> <p>19 being under the influence of illegal drugs,</p> <p>20 alcohol, or other intoxicating substances at any</p> <p>21 time on HMMA property. Gifts of alcohol or</p> <p>22 coolers containing alcohol are prohibited at</p> <p>23 HMMA.</p> <p style="text-align: right;">46</p>	<p>1 A Showed up positive in the urine sample,</p> <p>2 yes.</p> <p>3 Q What about the alcohol? Did they catch</p> <p>4 you with that, too?</p> <p>5 A No.</p> <p>6 Q Did you tell them you'd also been</p> <p>7 drinking alcohol?</p> <p>8 A On the weekend I had, that Saturday,</p> <p>9 but I wasn't at work.</p> <p>10 Q Did you tell them that?</p> <p>11 A Yeah, I disclosed that to the HR</p> <p>12 people, and then also I had to attend a</p> <p>13 substance abuse program -- alcohol and substance</p> <p>14 abuse program for condition of employment.</p> <p>15 Q What was the date you got caught?</p> <p>16 A March the 24th or 5th or 6th somewhere</p> <p>17 in there. Towards the last week of March.</p> <p>18 Q 2007?</p> <p>19 A Yes, sir.</p> <p>20 Q So what happened? You were the</p> <p>21 Stamping Plant manager at that time?</p> <p>22 A Yeah.</p> <p>23 Q In charge of 30 people?</p> <p style="text-align: right;">48</p>

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1 A Yeah. As the manager, I'd be in charge
2 of the whole department then, but at that time,
3 I was just in charge of night shift. That would
4 be correct.

5 Q How many people on the night shift
6 would you be in charge of?

7 A Night shift is 30 people. But the
8 department as a whole is around 80 people.

9 Q And you were in charge of the night
10 shift then?

11 A Right.

12 Q But you're also in charge of the whole
13 department?

14 A Normally.

15 Q Normally. So that would be 80 people?

16 A Correct.

17 Q And you would be in charge of the
18 safety of those 80 people?

19 A Correct.

20 Q So you showed up on the job with
21 cocaine in your system and alcohol in your
22 system and in charge of the safety of 30 people
23 in Stamping Plant?

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1 Q Knew what it would do to the human
2 brain?

3 A Yes, sir.

4 Q Knew what it would do to your brain?

5 MR. JOHNSON: Object to the form.

6 Q Is that correct?

7 A I knew the feeling.

8 Q Right. Well, you knew it was -- it's a
9 brain-altering substance, didn't you?

10 MR. JOHNSON: Object to the form.

11 A I know what the feeling is.

12 Q Well, you know it's a mind-altering
13 substance, don't you, Mr. Brookshire?

14 MR. JOHNSON: Object to the form.

15 Q You can answer me.

16 A I already have.

17 Q Well, you say you knew what it felt
18 like. I want to know did you know what it does
19 to the brain.

20 A I had done classes on it. I've had
21 classes on it back in high school, Health and
22 Science classes.

23 Q So you knew it was an illegal drug;

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1 MR. JOHNSON: Object to the form.

2 A I tested positive for -- on a drug
3 test, not alcohol.

4 Q Well, but you had been using alcohol?

5 A On the weekend when I wasn't at the
6 plant. Correct.

7 Q Well, you said it. I just want to find
8 out about it. You had been using alcohol and
9 you'd been -- what did you do? Snort cocaine?

10 MR. JOHNSON: Object to the form.

11 A I had had a person at the party hand me
12 some out of their pocket.

13 Q Did you snort it?

14 A Yeah.

15 Q How did you know how to ingest it?

16 A During my younger, stupid days I had
17 messed around with it in my mid 20s.

18 Q So you used cocaine before?

19 A Yeah, my younger days I had.

20 Q You knew how to snort it?

21 A Yes, sir.

22 Q Knew what it was?

23 A Yes, sir.

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1 correct?

2 MR. JOHNSON: Object to the form.

3 A Correct.

4 Q And you knew it was a crime; correct?

5 MR. JOHNSON: Object to the form.

6 A Correct.

7 Q And you knew that it has serious long-
8 and short-term effects; correct?

9 MR. JOHNSON: Object to the form.

10 A I'm not an expert on that subject
11 matter. I couldn't tell you what the exact
12 long-term and short-term effects are on it.

13 Q I thought you said you took some course
14 or class on it?

15 A High school.

16 Q In high school. All right. Well, are
17 you on drug rehab now?

18 A No.

19 Q Were you ever on drug rehab?

20 A There was a three-week program,
21 substance abuse program.

22 Q When were you on that program?

23 A April, first part of May. Three

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JAMES ALLEN BROOKSHIRE

<p>1 weeks. It's a three-week program.</p> <p>2 Q 2007?</p> <p>3 A Correct.</p> <p>4 Q Put on by who?</p> <p>5 A By the HR group. It's -- it was a</p> <p>6 condition of employment.</p> <p>7 Q You mean --</p> <p>8 A A successful completion.</p> <p>9 Q So it's Hyundai?</p> <p>10 A Correct.</p> <p>11 Q So you spent how many weeks in a</p> <p>12 Hyundai substance abuse program?</p> <p>13 A Three weeks.</p> <p>14 Q Three weeks. Did you get paid for</p> <p>15 going?</p> <p>16 A Yes.</p> <p>17 Q Did you go on company time?</p> <p>18 A I went on -- you get put on disability.</p> <p>19 Q So you were put on disability?</p> <p>20 A Correct.</p> <p>21 Q So you got paid as a disabled person?</p> <p>22 A However the program works. They call</p> <p>23 it -- however it works out. I don't know all</p> <p style="text-align: right;">53</p>	<p>1</p> <p>2 Q Turn back if you would to the Team</p> <p>3 Member Handbook. That's Exhibit 15. We were</p> <p>4 looking at that earlier. Page 34. That's that</p> <p>5 little list of serious misconduct. How about</p> <p>6 circling that one that you say you violated and</p> <p>7 put your name and your initials?</p> <p>8 A (Witness complied.)</p> <p>9 Q Have you done that?</p> <p>10 A Yeah.</p> <p>11 Q Okay. So you said you had abused</p> <p>12 cocaine early on in life?</p> <p>13 A Yeah.</p> <p>14 Q Over what period of time?</p> <p>15 A Mid 20s. Between 24 and 26, 27.</p> <p>16 Somewhere around there.</p> <p>17 Q And then you're 35 now?</p> <p>18 A Excuse me?</p> <p>19 Q How old are you now?</p> <p>20 A 35.</p> <p>21 Q 35. And where was this party you were</p> <p>22 at?</p> <p>23 A Place over in Prattville.</p> <p style="text-align: right;">55</p>
<p>1 the stipulations.</p> <p>2 Q What were you told?</p> <p>3 A That I had to complete a successful --</p> <p>4 how do I put it -- I had to complete the program</p> <p>5 successfully to maintain my job, and then I</p> <p>6 would be monitored for two years after at random</p> <p>7 drug and alcohol screens. And at any point in</p> <p>8 time if I tested positive on either one of</p> <p>9 those, I would meet immediate termination of my</p> <p>10 employment.</p> <p>11 Q So were you -- you were still employed</p> <p>12 while you were on this Hyundai substance abuse</p> <p>13 program?</p> <p>14 A Correct.</p> <p>15 Q But you didn't receive your regular</p> <p>16 salary, you received disability?</p> <p>17 A Correct. That was my -- I didn't look</p> <p>18 into all that, so I don't know how all that</p> <p>19 works out but I was paid while I was gone.</p> <p>20 Q All right.</p> <p>21</p> <p>22 (Whereupon, a discussion was held off the</p> <p>23 Record.)</p> <p style="text-align: right;">54</p>	<p>1 Q Prattville. Whose house?</p> <p>2 A Hector.</p> <p>3 Q What's the name?</p> <p>4 A Hector.</p> <p>5 Q Hector. What's the full name?</p> <p>6 A Hector. I can't remember his last</p> <p>7 name. My wife -- my stepdaughter is good</p> <p>8 friends their daughter, and that's why we were</p> <p>9 over there. I believe his name is Hector Gomez,</p> <p>10 I think.</p> <p>11 Q You didn't know Hector Gomez?</p> <p>12 A I knew him, yes.</p> <p>13 Q You knew him. It must have been a</p> <p>14 pretty fun party, huh?</p> <p>15 MR. JOHNSON: Object to the form.</p> <p>16 A It was just a party.</p> <p>17 Q All right. So it was just a party. So</p> <p>18 you were drinking alcohol and snorting cocaine</p> <p>19 at this party; is that correct?</p> <p>20 A Yeah.</p> <p>21 Q Did you cut it yourself?</p> <p>22 A No.</p> <p>23 Q Who cut it?</p> <p style="text-align: right;">56</p>

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<p>1 A A guy that I didn't know.</p> <p>2 Q Did you pay for it?</p> <p>3 A I didn't know the guy. No.</p> <p>4 Q It was given to you?</p> <p>5 A Yeah. He had one of those little --</p> <p>6 little things that's already cut up in there and</p> <p>7 they carry it around in a vial. He just...</p> <p>8 Q You had seen that before?</p> <p>9 A Yeah.</p> <p>10 Q Have you used that before?</p> <p>11 A Yeah, I have.</p> <p>12 Q I've looked up how cocaine works. One</p> <p>13 of the descriptions that I found, I'm going to</p> <p>14 read it to you. See if you agree with it. It</p> <p>15 causes initially euphoria and a sense of buoyant</p> <p>16 well-being marked by a feeling of complete</p> <p>17 self-confidence, as well as pleasant</p> <p>18 hallucinations, visual and auditory. The peak</p> <p>19 lift lasts only briefly, however, only 15 to 30</p> <p>20 minutes. Although, lesser effects last up to</p> <p>21 two to four hours. Do you know that that's what</p> <p>22 it does?</p> <p>23 A Euphoria. I've experienced that with</p> <p style="text-align: right;">57</p>	<p>1 is a stimulant. I mean, you're almost leveled</p> <p>2 out.</p> <p>3 Q So you felt leveled out?</p> <p>4 A (Witness nods head.)</p> <p>5 Q Is that correct?</p> <p>6 A Yeah.</p> <p>7 Q All right. And did you know -- how did</p> <p>8 you know that the alcohol and cocaine had that</p> <p>9 effect?</p> <p>10 A I told you. I had had experience with</p> <p>11 both of them in the past.</p> <p>12 Q So you'd actually done both of them in</p> <p>13 the past together?</p> <p>14 A I have before, yes.</p> <p>15 Q So sometimes you'd snort cocaine and</p> <p>16 use the alcohol to level it out; sometimes you'd</p> <p>17 use the alcohol and use the cocaine to level it</p> <p>18 out?</p> <p>19 MR. JOHNSON: Object to the form.</p> <p>20 Q Isn't that right?</p> <p>21 A I guess.</p> <p>22 Q Well, don't guess. Tell me. What's</p> <p>23 the truth?</p> <p style="text-align: right;">59</p>
<p>1 it, but not hallucinations.</p> <p>2 Q So you would be immune to that type of</p> <p>3 effect?</p> <p>4 MR. JOHNSON: Object to the form.</p> <p>5 Q Is that correct?</p> <p>6 A I don't know if anybody is immune to</p> <p>7 anything. But I can just tell you what I've</p> <p>8 experienced with it.</p> <p>9 Q How many other people were there</p> <p>10 snorting cocaine?</p> <p>11 A I just know about myself and the other</p> <p>12 guy that had given me some. I don't know who</p> <p>13 else.</p> <p>14 Q And you were drinking alcohol at the</p> <p>15 same time?</p> <p>16 A Yes, sir.</p> <p>17 Q What's the effect of alcohol combined</p> <p>18 with cocaine?</p> <p>19 MR. JOHNSON: Object to the form.</p> <p>20 A I'm not an expert on that. I mean, I</p> <p>21 can tell you how I felt.</p> <p>22 Q Yeah. How did you feel?</p> <p>23 A The alcohol is a depressant. Cocaine</p> <p style="text-align: right;">58</p>	<p>1 A That's what I had done at the time.</p> <p>2 Q And what time was this party over?</p> <p>3 A Probably around 11 or 12.</p> <p>4 Q Midnight?</p> <p>5 A Probably around there.</p> <p>6 Q And what time did you go to work?</p> <p>7 A I didn't go to work until that Monday.</p> <p>8 That was Saturday night.</p> <p>9 Q Saturday night. So you didn't know</p> <p>10 whether or not the cocaine was still in your</p> <p>11 system, did you?</p> <p>12 A No. Obviously if I knew that I had</p> <p>13 done it and done a lot of it, I wouldn't have</p> <p>14 even went to the hospital to get -- because I</p> <p>15 know it's a known protocol to get drug tested.</p> <p>16 Q What was that?</p> <p>17 A I said obviously if I knew that I had</p> <p>18 done a lot of it and intentionally done it, I</p> <p>19 wouldn't have even went up to the hospital to</p> <p>20 get treatment for my cut.</p> <p>21 Q So when you cut yourself, you knew</p> <p>22 that you were going to get drug tested, didn't</p> <p>23 you?</p> <p style="text-align: right;">60</p>

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1 A Yeah.
 2 Q Why didn't you just fess up before they
 3 found it?
 4 A Because I didn't acknowledge it because
 5 of the state I was in in intoxication and
 6 drinking alcohol.
 7 Q You were still intoxicated?
 8 A No. Not at that time, no. But at the
 9 time I had done the cocaine I had been.
 10 Q All right. And there's various
 11 nicknames for this stuff. Which one do you use?
 12 A I just call it coke.
 13 Q Coke. Have you ever heard it referred
 14 to as flake or free base or lady or nose candy
 15 or rock snow or anything like that?
 16 A I've heard it called snow before, but
 17 that's about it.
 18 Q How about big C?
 19 A Huh-uh.
 20 Q How about blow?
 21 A I have heard of that because I've seen
 22 a movie called Blow.
 23 Q Okay. Before you went on this Hyundai

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1 A Like I said, I knowingly didn't think
 2 it was in me.
 3 Q You wouldn't have volunteered it, would
 4 you?
 5 A No.
 6 Q How about a hair sample? Did they take
 7 a hair sample?
 8 A They didn't take one.
 9 Q Did somebody else take one?
 10 A Did somebody...
 11 Q You can take hair samples and find out
 12 about cocaine use, too, can't you?
 13 A I don't know. I know you can find it
 14 in urine, and I understand that you can find it
 15 in blood but I don't know about hair.
 16 Q Well, I was giving you what I thought
 17 was your whole personnel file. Why isn't this
 18 drug test in your personnel tile?
 19 A Why what?
 20 Q I don't see the drug test, the urine
 21 test in personnel file. Why isn't it in there?
 22 A I couldn't answer. I'm guessing they
 23 probably keep that in Medical Department or

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1 drug treatment program, had you ever been on any
 2 other drug treatment programs?
 3 A No.
 4 Q And with cocaine in your system and
 5 managing 30 people that day you don't feel like
 6 you had created an unsafe work practice?
 7 MR. JOHNSON: Object to the form.
 8 A It wasn't in my system at work. I
 9 wasn't at work.
 10 Q Well, it was in your system because
 11 they found it on the job, didn't they?
 12 A I tested positive in urine, but I
 13 wasn't knowingly taking it at work or going to
 14 work taking it.
 15 Q So it was in your urine; correct?
 16 A Correct.
 17 Q Well, why did they take a urine sample
 18 if all you came in there for was a cut?
 19 A It's protocol for every safety incident
 20 to be drug tested.
 21 Q And if they hadn't found it in your
 22 urine sample, you wouldn't have volunteered it,
 23 would you?

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1 Teams Relations keeps it. I'm not sure.
 2 Q Did the 30 people under your
 3 supervision while you had cocaine in your
 4 system -- did they know that you had cocaine in
 5 your system?
 6 MR. JOHNSON: Object to the form.
 7 A No.
 8 Q You think they would have entrusted you
 9 with their safety if they had known you had
 10 cocaine in your system?
 11 MR. JOHNSON: Object to the form.
 12 A I'm not sure. I can't answer that for
 13 them.
 14 Q Well, would you trust somebody
 15 supervising you in a dangerous plant like that
 16 with cocaine in their system?
 17 MR. JOHNSON: Object to the form.
 18 A I can't -- I mean, I know how I had
 19 felt when I was on it. I can't -- I can't...
 20 Q So are you -- you made a medical
 21 determination that you weren't affected by this
 22 cocaine and that's why you went to work?
 23 MR. JOHNSON: Object to the form.

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JAMES ALLEN BROOKSHIRE

<p>1 A No.</p> <p>2 Q Well, why did you go to work with this</p> <p>3 stuff in your system?</p> <p>4 MR. JOHNSON: Object to the form.</p> <p>5 A Because I knowingly wasn't -- obviously</p> <p>6 the urine sample tested positive. But you</p> <p>7 yourself just read that the effects last how</p> <p>8 long?</p> <p>9 Q Well, I just read the short-term</p> <p>10 effects. Do you want me to read you the</p> <p>11 long-term effects?</p> <p>12 A That's with how much usage?</p> <p>13 Q Well, what are the long-term effects?</p> <p>14 You've been through the program. Did you learn</p> <p>15 what they are?</p> <p>16 MR. JOHNSON: Object to the form.</p> <p>17 Q Tell me what you learned.</p> <p>18 A With serious usage and consumption, you</p> <p>19 will have problems down the road with lower</p> <p>20 dopamine samples in your brain internally.</p> <p>21 Q Okay. Well, other than lower dopamine,</p> <p>22 what other long-term effects are there?</p> <p>23 A Depression.</p> <p style="text-align: right;">65</p>	<p>1 Q So you took the risk with your safety</p> <p>2 and the safety of your fellow workers that some</p> <p>3 of those effects might take place, didn't you?</p> <p>4 MR. JOHNSON: Object to the form.</p> <p>5 A At the time when I was under it, that</p> <p>6 was the short-term side effects.</p> <p>7 Q How do you know you haven't suffered</p> <p>8 long-term side effects?</p> <p>9 A I'm not a medical expert. I can't</p> <p>10 justify that. But I know in the past -- from</p> <p>11 what I understand of that class after you</p> <p>12 discontinue use of it, your dopamine levels will</p> <p>13 come back and level out and your mindset is</p> <p>14 normal.</p> <p>15 Q But you didn't know that at the time</p> <p>16 you got caught, did you?</p> <p>17 A No.</p> <p>18 Q And you think showing up at work with</p> <p>19 cocaine in your system is not near as bad as</p> <p>20 sleeping on the job, is it?</p> <p>21 MR. JOHNSON: Object to the form.</p> <p>22 A I can't -- I can't answer that one.</p> <p>23 Q Well, you're a manager. What do you</p> <p style="text-align: right;">67</p>
<p>1 Q So you've never suffered anything like</p> <p>2 rapid heartbeat?</p> <p>3 A Instantaneously you do.</p> <p>4 Q How about rapid breathing?</p> <p>5 A Instantaneously you do.</p> <p>6 Q How about soaring blood pressure?</p> <p>7 A Instantaneously.</p> <p>8 Q How about palpitations?</p> <p>9 A I don't know about that one.</p> <p>10 Q Sweating?</p> <p>11 A Yeah.</p> <p>12 Q Severe headache?</p> <p>13 A No.</p> <p>14 Q Pallor?</p> <p>15 A What's that?</p> <p>16 Q Pale. You haven't ever suffered that?</p> <p>17 A Huh-uh.</p> <p>18 Q And you do know that use of cocaine can</p> <p>19 sometimes result in heart failure and death,</p> <p>20 don't you?</p> <p>21 MR. JOHNSON: Object to the form.</p> <p>22 A My understanding taking of that class</p> <p>23 in mass quantities it can.</p> <p style="text-align: right;">66</p>	<p>1 think?</p> <p>2 A To me, it would depend on if the person</p> <p>3 just done it or if they'd been off of it for a</p> <p>4 couple of days. To me, there's a big</p> <p>5 difference. There's the quick effects and the</p> <p>6 long-term effects. The quick effects, I</p> <p>7 wouldn't trust somebody at work. Just like with</p> <p>8 alcohol or somebody experiences problems and</p> <p>9 uncontrolled states and drinking excessive</p> <p>10 amounts of coffee and caffeine.</p> <p>11 Q So you equate cocaine usage to drinking</p> <p>12 coffee?</p> <p>13 A If I drink two or three cups of coffee</p> <p>14 and did a snort of that, yeah, I would.</p> <p>15 Q Have you ever heard of a Hyundai coffee</p> <p>16 abuse program?</p> <p>17 A No, they don't do that because coffee</p> <p>18 is legal.</p> <p>19 Q Have you ever served any time in prison</p> <p>20 for this cocaine habit?</p> <p>21 A No, sir.</p> <p>22 MR. JOHNSON: Object to the form.</p> <p>23 Q Did Hyundai report you to law</p> <p style="text-align: right;">68</p>

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1 enforcement?

2 A I have no idea.

3 **Q Have you ever bought the cocaine?**

4 A In the past when I was younger, I --

5 MR. JOHNSON: Just a second.

6 Obviously, object to the form of the question.

7 I'm not sure it's relevant here. But

8 additionally to the extent that I don't want him

9 to make any statements that might get him into
10 criminal jeopardy.

11 MR. KILBORN: Well, he can take the
12 Fifth Amendment. But I want to know the answer

13 to that question. This is the eye witness to

14 this case who has been caught red handed using

15 cocaine, showed up at the Hyundai plant with it

16 in his system in a managerial position, given a

17 pass, wasn't terminated, around the time that

18 these incidents occurred. I want to go into

19 that. I think it's a credibility issue.

20 MR. JOHNSON: And I understand your

21 point. However -- and we've allowed him to

22 testify fully about his cocaine usage and you've

23 asked him plenty of questions about what

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1 cocaine?

2 MR. JOHNSON: Again, same response

3 there. My advice is that he not answer. He

4 pleads the Fifth Amendment and is not answering.

5 **Q Have you ever had possession of drug**

6 **paraphernalia?**

7 MR. JOHNSON: Again, same response to

8 that issue.

9 **Q Are you taking the Fifth Amendment on**
10 **that, too?**

11 A Yes.

12 **Q Well, you committed a felony, right,**
13 **prior to showing up at work, didn't you?**

14 MR. JOHNSON: Object to the form. And
15 same response to that question.

16 **Q You take the Fifth Amendment on that?**

17 A Yes.

18 **Q Well, don't you think commission of a**
19 **felony would be willful misconduct under**
20 **anybody's definition?**

21 MR. JOHNSON: Object to the form.

22 A I think that condition lies within the

23 company's policies. That's not something that I

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1 happened at work. But beyond that, I see no
2 relevance, and I can't imagine anything -- I'm
3 not a criminal lawyer, and my recommendation to
4 him is to seek criminal counsel if he's going to
5 testify beyond what he's already testified to.

6 MR. SPORT: Well, he indicated he was
7 represented by counsel today, so direct him not
8 to answer.

9 MR. JOHNSON: Well, then, I direct him
10 not to answer that question.

11 MR. KILBORN: Well, I'm going to pursue
12 this. You can direct him not to answer.

13 **Q Are you refusing to answer whether or**
14 **not you have ever purchased cocaine?**

15 MR. JOHNSON: Under my advice, he is.

16 **Q All right. Have you ever sold cocaine?**

17 MR. JOHNSON: Again, we would also --
18 my advice is that he not answer that and he will
19 not answer that.

20 MR. KILBORN: Is he taking the Fifth
21 Amendment?

22 MR. JOHNSON: Yes.

23 **Q Have you ever had possession of**

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1 solely determine myself.

2 **Q Well, you -- on your application we**
3 **reviewed a minute ago in Bates number 258, you**
4 **said on your application do you know of any**
5 **reason why you would not be able to perform**
6 **various functions of the job you're seeking**
7 **now. Wouldn't you agree that snorting cocaine**
8 **could impair you in performing your job?**

9 MR. JOHNSON: Object to the form.

10 A If I had deliberately done it right
11 before I went to work or during work, I would
12 agree with that.

13 **Q Suppose you had not deliberately done**
14 **it.**

15 A I think I would know if I had
16 deliberately done it or not right before I went
17 to work or not.

18 **Q Well, why didn't you reveal in this**
19 **application that you were basically a cocaine**
20 **abuser?**

21 MR. JOHNSON: Object to the form.

22 A At the time in which this application
23 was filled out, I wasn't. And to get a job at

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1 Hyundai, I had to take a drug test; hair test,
2 blood test, and urine.

3 **Q So you do know what a hair test is?**

4 **A** At that time they took it. But what
5 you asked me was if I knew if it showed up on it
6 or what it takes to show up on it. I don't
7 know.

8 **Q So you took a hair test, a blood test,
9 and a urine test?**

10 **A** Yeah.

11 **Q But you knew you were going to have to
12 take that; right?**

13 **A** I what?

14 **Q You knew to get a job you were going to
15 have to take that drug screen, didn't you?**

16 **A** Not necessarily. I know you've got to
17 take urine tests to get jobs.

18 **Q Well, you knew -- you'd consented to
19 taking a drug test on your application, didn't
20 you?**

21 **A** Right.

22 **Q So you knew they were going to test you
23 for cocaine and any other drug, didn't you?**

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1 **Q All right. So you made the judgment as
2 a manager that since you felt physically free of
3 the effects of cocaine you could go in there and
4 supervise 30 workers?**

5 **MR. JOHNSON:** Object to the form.

6 **Q Is that correct?**

7 **A** I felt confident in my physical
8 condition in which I appeared to work on Monday.

9 **Q Well, apparently, Hyundai didn't feel
10 confident in that, did they?**

11 **MR. JOHNSON:** Object to the form.

12 **A** They were following protocol for a
13 positive test on a urine sample.

14 **Q Well, do you know why Hyundai has got a
15 policy against drug usage?**

16 **A** I wouldn't be able to tell you all the
17 reasons why. I mean, I didn't make the policy
18 and I wouldn't be able to tell you what -- all
19 the reasons why.

20 **Q Well, tell me one reason why.**

21 **MR. JOHNSON:** Object to the form.

22 **A** Probably with deliberate or current
23 usage it probably would debilitate the judgment,

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1 **A** Yeah, I knew they was going to take a
2 urine test. Most jobs, places conditions of
3 employment do call for urine samples.

4 **Q So you knew full well not to use
5 cocaine before you did that?**

6 **A** I never knew what the actual period was
7 it stayed in your system until I took the class.

8 **Q Well, how do you know it didn't stay in
9 your system for a year if you didn't know before
10 you took the class?**

11 **A** I guess I wouldn't.

12 **Q How do you know it didn't stay in your
13 system for a week?**

14 **A** I guess I wouldn't.

15 **Q Well, how do you know it wouldn't stay
16 in your system for at least 48 hours?**

17 **A** (No response.)

18 **Q How do you know it wouldn't have stayed
19 in your system from the midnight you left the
20 party until the five a.m. when you showed up
21 Monday morning?**

22 **A** You just know the condition which you
23 feel physically at the time.

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1 activities, and reasoning of the individual.

2 **Q Well, this policy doesn't require
3 that. It just says if you're using drugs that's
4 a willful misconduct, doesn't it?**

5 **MR. JOHNSON:** Object to the form.

6 **Q Excuse me?**

7 **A** If that's the way it's worded, that's
8 the way it's worded.

9 **Q Now, let's turn to Bates number 282 of
10 your personnel file, Exhibit 14. That's a memo
11 from Wendy Warner to James Brookshire. That's
12 you. Have you ever seen that before?**

13 **A** Yeah, I signed that.

14 **Q It says management TM. Whose signature
15 is that?**

16 **A** Management TM. Oh, you mean Team
17 Relations rep?

18 **Q Well, MGMT TM. Whose signature is
19 that?**

20 **A** Are you talking about where it says
21 management TM REL?

22 **Q No. Right above that.**

23 **A** Management TM, Wendy Warner.

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1 Q And then where it says management TM
2 REL, whose signature is that?

3 A Rob Clevenger.

4 Q He would be your superior?

5 A Team Relations Representative.

6 Q Okay.

7 A Same person that would represent
8 Mr. Dees. Well, him or William Ware.

9 Q So Mr. Clevenger has full knowledge of
10 your drug use?

11 A He knows -- he has knowledge of this
12 incident and violation of this policy.

13 MR. JOHNSON: Object to the form.

14 Q And so does Ms. Warner?

15 MR. JOHNSON: Object to the form.

16 A I presume.

17 Q What happened to you after this urine
18 test showed the presence of cocaine? What
19 happened to you after that?

20 A I was admitted to a program,
21 three-week -- well, they gave me the option of a
22 three-week program or a six-week program.

23 Q Were you told -- were you threatened

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1 to let me know that it was policy; that they
2 needed to follow protocol; that I either needed
3 to self-admit or they would admit me to a
4 program. And failure to complete or admit
5 myself to the program would end in termination
6 of employment.

7 Q Is this program on the premises of
8 Hyundai?

9 A No.

10 Q Where is it?

11 A It's -- I think they have a couple
12 different places, but the one I went to is
13 Alabama Psych.

14 Q Give me the name of that.

15 A I think they call it APS.

16 Q APS. And you attended that daily?

17 A Yeah, every day for three weeks.

18 Q All day?

19 A Yeah.

20 Q Where is it located?

21 A Carmichael Parkway.

22 Q In Prattville?

23 A Montgomery.

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1 with termination?

2 A If I did not complete the program --
3 did not submit myself to the program or complete
4 the program with success, then, yes, I would be
5 terminated.

6 Q And who told you that?

7 A That was told to me by Wendy.

8 Q And where was this meeting with
9 Ms. Warner?

10 A Up in HR.

11 Q In her office?

12 A Well, they've got conference rooms
13 along the wall there.

14 Q Was it a private conference room?

15 A Yeah.

16 Q Nobody else listening?

17 A Rob was there.

18 Q Rob Clevenger was there?

19 A Yeah.

20 Q Well, tell me what happened.

21 A They informed me that Medical had
22 contacted them and informed them of the status
23 or condition of my urine sample and they wanted

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1 Q And it's called APS?

2 A Yeah.

3 Q How many other people were in that
4 program?

5 A At the time I had started, there was
6 four other people, but they weren't from
7 Hyundai. They were other people in the program.

8 Q Right. And did you get drug screens
9 during that program?

10 A Oh, yeah.

11 Q Every day?

12 A It varied. They wouldn't tell you.

13 They wouldn't tell you. It would be in the
14 morning, in the afternoon, lunchtime.

15 Q Did you tell them about your alcohol
16 abuse?

17 A Yeah.

18 MR. JOHNSON: Object to the form.

19 A Yes, I did.

20 Q Is that a 12 Step program?

21 A Yeah.

22 Q And what step are you in right now?

23 A I had -- part of that program was I had

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1 to attend AA meetings as well and get signatures
2 from representatives of AA meetings.

3 **Q So you were simultaneously going to the**
4 **drug rehab program with APS as well as AA?**

5 A Yeah.

6 **Q And how did you end up in AA?**

7 A Because the position that was given by
8 my therapist and the psychiatric doctors that
9 were there, they had clinically diagnosed that
10 it wasn't a substance abuse problem that I
11 have. They had seen with the disposition of my
12 family in the past with my mother being an
13 alcoholic and my grandfather being an alcoholic
14 and -- and I had admitted to them that I would
15 drink on weekends but I did not drink during the
16 week while I was working. But I admitted it to
17 them. And they had ran me through, like I said,
18 with the psychiatrist and the therapist that's
19 what they deemed the most important thing was
20 for me to attend AA meetings.

21 **Q What was the name of the psychiatrist?**

22 A Dr. Shaw, I believe.

23 **Q Is he a medical doctor?**

81

1 A That's part of their meetings. That's
2 part of their protocol. There's people there
3 that hadn't drank in ten years and they've still
4 got to stand up and say that.

5 **Q Well, you had to stand up and say that,**
6 **didn't you?**

7 A That would be correct.

8 **Q And you had to stand up and say that in**
9 **the drug abuse program, too, regarding drugs,**
10 **didn't you?**

11 MR. JOHNSON: Object to the form.

12 A What do you mean? Stand up in the drug
13 program?

14 **Q Well, you had to admit that you were**
15 **addicted to drugs, that's why you were there.**

16 A That wasn't the clinical analysis that
17 was done by the doctor or the therapist.

18 MR. JOHNSON: Object to the form.

19 **Q Did you stand up and admit that?**

20 A Admit what?

21 **Q That you were addicted to drugs?**

22 A No. I admitted I made a stupid
23 decision one night.

83

1 A I don't know what -- all of his
2 classifications. I believe he was a
3 psychiatrist. I know that much.

4 **Q And what's the name of the therapist?**

5 A Jena Empey.

6 **Q E-M-B-Y?**

7 A E-M-P-Y.

8 **Q And what is she?**

9 A She's a licensed therapist. And I
10 don't know what all of her credentials were, but
11 she was a licensed therapist.

12 **Q And the first step in either the 12**
13 **point drug abuse program or the 12 point alcohol**
14 **abuse program is admission that you are addicted**
15 **to alcohol and/or drugs, isn't it?**

16 MR. JOHNSON: Object to the form.

17 A The AA meeting it was admitting that
18 alcohol could have control over your life.
19 Meaning that it can be a problem in your life.

20 **Q Well, you have to get up there and say**
21 **my name is Jim Brookshire and I'm an alcoholic.**
22 **You have to make that admission, don't you?**

23 MR. JOHNSON: Object to the form.

82

1 **Q One night; right?**

2 A That would be correct.

3 **Q Okay. And let's go back to this Bates**
4 **number 282, Plaintiff's Exhibit 14. At the time**
5 **of this -- well, it says on March 27, 2001, HMMA**
6 **received confirmation as a result of your random**
7 **drug screen. When was the actual date that you**
8 **were caught?**

9 A It was somewhere around March the 25th,
10 26th. Somewhere right around there. I can't
11 remember. It was on a Tuesday or Wednesday.

12 **Q And it says in here that it's got four**
13 **conditions; is that correct?**

14 A Yeah.

15 **Q One, you had to attend a substance**
16 **abuse assessment session scheduled through**
17 **HMMA's Medical Clinic. Was that done?**

18 A Yes.

19 **Q Said you were required to comply with**
20 **all aspects of the prescribed rehab program.**
21 **Was that done?**

22 A Yeah.

23 **Q Said you must agree to allow HMMA**

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<p>1 Medical Clinic to monitor your progress and 2 communicate with the assessment and 3 rehabilitation provider. 4 A Yeah. 5 Q That was accomplished? 6 A Yeah. 7 Q And then it said any future use or 8 possession of illegal and/or nonprescription 9 drugs or being under the influence of alcohol or 10 nonprescription drugs and/or illegal drugs while 11 on HMMA premises will subject you to corrective 12 action up to and including termination. You 13 understood that? 14 A Yeah. They told me that without a 15 doubt I'd be -- anything happened again I'd be 16 terminated. And I've been -- part of their 17 process also is I'm subjected to random 18 drug/alcohol tests every month. I get two to 19 three tests every month. It's been going on 20 since then. 21 Q Outside of Ms. Warner and Mr. Clevenger 22 who else at the Hyundai plant knows that? 23 A I couldn't tell you. I don't know.</p> <p style="text-align: right;">85</p>	<p>1 Q So at the time that you saw Mr. Dees 2 sleeping on the job, you were an alcoholic and 3 you did abuse alcohol; is that correct? 4 MR. JOHNSON: I'm sorry. I 5 misunderstood that. What was that? 6 Q At the time you saw Mr. Dees sleeping 7 and reported him, you were an alcoholic and you 8 were abusing alcohol; is that correct? 9 MR. JOHNSON: Object to the form. 10 A I had no deliberate use of alcohol at 11 the time, but on the weekend I had a drink. 12 Q Well, how do you not deliberately use 13 alcohol? 14 A Like if I knew I was going into work 15 that afternoon drinking a few beers before I 16 went in to work. 17 Q And I don't mean to embarrass you and 18 there are a lot of people who are recovering 19 alcoholics. But were you an alcoholic on the 20 day you saw Dees sleeping? 21 A What's your definition of an 22 alcoholic? 23 Q Whatever your definition is. You're</p> <p style="text-align: right;">87</p>
<p>1 Q Did anybody ask you why did you 2 disappear? 3 A I had Team Members ask me that. 4 Q Who asked you that? 5 A Just Team Members on the floor. They 6 said is everything okay. Because they knew my 7 wife and I had had some marital problems, too. 8 Q Well, had your cocaine use caused 9 marital problems? 10 A No. 11 Q You hesitated. Are you sure? 12 A No. 13 Q How about your alcohol abuse? 14 MR. JOHNSON: Object to the form. 15 A Alcohol did interfere with it in the 16 sense that my wife and I would have serious 17 arguments and I would walk out of the house and 18 go to the garage and drink a few beers, drink a 19 six-pack or so just to not listen to her because 20 she was unhappy about the move down here. 21 Q Y'all didn't go through the unfortunate 22 experience of getting in a divorce, did you? 23 A No.</p> <p style="text-align: right;">86</p>	<p>1 the expert. 2 A I'm not an expert. 3 MR. JOHNSON: Object to the form. 4 Q Well, you've been through the program. 5 A From my understanding the clinical 6 definition is I was a conditional alcoholic. 7 Q And you were that on the day you saw 8 Dees sleeping? 9 A A conditional alcoholic on the weekends 10 when my wife and I would have altercations. 11 Q And that alcoholism had led to serious 12 problems with your wife? 13 MR. JOHNSON: Object to the form. 14 A No. It was due to the stress of the 15 move and going through a custody battle with my 16 wife's ex-husband. 17 Q And if you had been terminated for 18 being positive drug tested for cocaine, what do 19 you think that would have done to your 20 employment career? 21 A Probably dismantled it. 22 Q And that would have been a severe 23 emotional as well as financial blow to you,</p> <p style="text-align: right;">88</p>

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1 wouldn't it?

2 MR. JOHNSON: Object to the form.

3 A Yeah, it would have been a trial

4 sometime.

5 Q You would have had trouble getting a

6 job, wouldn't you?

7 MR. JOHNSON: Object to the form.

8 A I can't -- I can't say that. I don't

9 know.

10 Q So you've never been in a position of

11 having been terminated and tried to get a job?

12 A No.

13 Q Well, Mr. Dees is now in that position,

14 isn't he?

15 MR. JOHNSON: Object to the form.

16 A I don't know what he's doing right

17 now. I can't speak for that.

18 Q Well, you wouldn't want termination to

19 be a black mark on your employment record, would

20 you?

21 MR. JOHNSON: Object to the form.

22 A I mean, if it's -- if something like

23 that happens, it happens. I mean, I can't...

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1 of 24 months. You see that?

2 A Yes.

3 Q So you are a conditional employee,

4 aren't you?

5 A (Witness nods head.)

6 Q Is that correct?

7 A That would be correct.

8 Q All right. So basically you're on

9 probation today, aren't you?

10 A Correct.

11 Q With Hyundai; is that correct?

12 A Correct.

13 Q And you know that the slightest

14 misbehavior on your part is going to result in

15 immediate termination, don't you?

16 MR. JOHNSON: Object to the form.

17 A That's my understanding.

18 Q And Mr. Clevenger and Wendy Warner, as

19 well as the other Hyundai officials, they've

20 basically got life and death authority over your

21 job right now, don't they?

22 MR. JOHNSON: Object to the form.

23 A I don't know about they have sole

91

1 Q Well, do you agree with me that

2 termination is a black mark on your employment

3 record?

4 A I'm sure it would be a problem.

5 Q Would you agree with me that

6 termination for drug abuse like cocaine would be

7 a black mark on your employment record?

8 A Probably would be.

9 Q And at the time you were caught red

10 handed with cocaine in your system, you were the

11 only eye witness to Mr. Dees sleeping, were you

12 not?

13 MR. JOHNSON: Object to the form.

14 A I was the person that seen him

15 sleeping. That would be correct.

16 Q And you had signed two statements to

17 that effect, hadn't you?

18 A Correct.

19 Q And in this document we're looking at,

20 Bates number 228, signed by you, Wendy Warner,

21 and Mr. Clevenger, it says -- in the last

22 sentence it says this Letter of Conditional

23 Employment will remain in your file for a period

90

1 control or life or death. That falls in my

2 lap. That's my responsibility to control my

3 destiny through this issue.

4 Q So you're going to be on conditional

5 employment for two years?

6 A Correct.

7 Q So your conditional employment is going

8 to end when?

9 A Probably as of the date that I signed

10 on here, two years after that, '09.

11 Q April '09?

12 A April '09.

13 Q When is the last time you had used

14 cocaine before you got caught at the Hyundai

15 plant?

16 A I don't know. I was probably around 25

17 or 26. Somewhere right around there. I can't

18 recall exactly. That was ten years ago, eight

19 years ago.

20 Q Were you addicted to it?

21 A No. I was more or less experimenting.

22 Experimenting. Kind of a recreational --

23 recreational-type thing. You're around some

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23 (Pages 89 to 92)

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<p>1 people that were doing some of that stuff 2 sometimes, so it's kind of a stupid thing of 3 peer pressure, just fitting in, not making a 4 sound judgment on it at that time.</p> <p>5 Q Are you in charge of enforcing the drug 6 and alcohol abuse policy at the Hyundai plant in 7 your job as Stamping manager?</p> <p>8 A As far as enforcing the policy, if I 9 have an employee that I suspect that is doing 10 something like that or acting out in some way, 11 shape, or form, they are sent to Medical and 12 then dealt with through a process. As far as me 13 following through and dictating all that, that's 14 not my scope.</p> <p>15 Q When's the last time you've been 16 randomly drug tested?</p> <p>17 A I think the Wednesday or Thursday right 18 before Thanksgiving week.</p> <p>19 Q Two weeks ago?</p> <p>20 A Yeah.</p> <p>21 Q What did it show?</p> <p>22 A Negative.</p> <p>23 Q Who gets the results of that?</p> <p style="text-align: right;">93</p>	<p>1 information. And I note that a document related 2 to it was in his file that was produced, which 3 is Bates number 282. And I'd like for y'all to 4 produce that today so I can ask him questions 5 about it.</p> <p>6 And I would also point out that cocaine 7 usage is a serious problem. Cocaine usage can 8 affect one's ability to recollect, one's 9 observation capabilities. There are long-term 10 effects, which I think could bear on his 11 credibility.</p> <p>12 MR. JOHNSON: If we can just take a 13 quick break. Let me and Chris go discuss that 14 issue, and then we'll get back with you.</p> <p>15</p> <p>16 (Whereupon, a brief recess was had in 17 the proceeding.)</p> <p>18</p> <p>19 MR. KILBORN: I have requested prior to 20 the break the files on the Hyundai substance 21 abuse program treatment that the witness has 22 testified about as being relevant to credibility 23 issues clearly since he's the only eye witness</p> <p style="text-align: right;">95</p>
<p>1 A My understanding -- from what I 2 understand, Medical people give the results to, 3 I believe, HR, I believe.</p> <p>4 Q I want to take a break.</p> <p>5 MR. KILBORN: Matt, I'd like to get his 6 entire file regarding this cocaine incident.</p> <p>7 MR. SMITH: Make a request.</p> <p>8 MR. KILBORN: Well, I think it's 9 covered by our current discovery. It should 10 have been in his personnel file.</p> <p>11 MR. SMITH: It's at ICM. It's 12 maintained in separate files.</p> <p>13 MR. JOHNSON: The current request 14 that's outstanding that we responded to has to 15 do with the personnel file. This is a 16 completely separate medical file that contains 17 medical information, private health information 18 that employers, as I understand it, must keep 19 separately from general everyday personnel 20 info.</p> <p>21 MR. KILBORN: I know. Well, we do have 22 a protective order. I do think it's covered by 23 our request. I do think it's relevant</p> <p style="text-align: right;">94</p>	<p>1 in the case and the presence of cocaine in his 2 system was a short time after this incident took 3 place. As I understand, counsel has refused to 4 produce that on the grounds that, one, it hasn't 5 been requested and, two, that it's in the 6 possession of some other company called ICM. 7 And my position on the latter would be that it's 8 within Hyundai's possession, custody, or 9 control. Control being the operative word. And 10 I'm requesting it now so that I will not have to 11 come back and redepose the witness on the 12 subject matter of that since he's such a 13 critical witness in the case.</p> <p>14 MR. JOHNSON: Is that -- are you -- 15 have you stated your case?</p> <p>16 MR. KILBORN: Yes.</p> <p>17 MR. JOHNSON: And just for the Record, 18 again, as Mr. Kilborn has stated, medical 19 records or anything related to the personal 20 health information of Mr. Brookshire or any 21 other witness in the case has not been requested 22 and as such has not been identified or produced 23 in discovery in this case. To the extent a</p> <p style="text-align: right;">96</p>

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1 request is made, it will be addressed
 2 appropriately and in a timely fashion. We do
 3 not have that information here today in part
 4 because it wasn't requested and as such we are
 5 not in a position to produce it today.
 6 Secondly, and perhaps of equal
 7 practical importance, it is our understanding
 8 that the Medical Department information is kept
 9 on an outsource basis by a third-party and those
 10 documents would not be available on site at HMMA
 11 today. It may be possible to get them if they
 12 had been timely and appropriately requested, but
 13 it's our understanding that is likely not the
 14 case.
 15 MR. KILBORN: Will you state on the
 16 Record whether or not Hyundai does have control
 17 of those documents such that if they requested
 18 them they could get them?
 19 MR. JOHNSON: Had they been timely
 20 requested, we could have gotten them and
 21 responded appropriately.
 22 MR. KILBORN: Well, I'm going to
 23 continue.

97

1 **question is if that appears to be a sketch of**
 2 **this control panel is an accurate sketch?**

3 A I can't remember if it's got three or
 4 four doors, but I believe it's got three and
 5 then it's got the sheet metal platform below it.

6 **Q So your testimony is it's accurate?**

7 A (Witness nods head.) Yeah.

8 **Q Is that a yes?**

9 A Yes.

10 **Q Do you see a chair in the sketch?**

11 A Yes, I do.

12 **Q Was that chair there on the night of**
 13 **the incident in question?**

14 A Yeah, the chair was about where it was
 15 up against the middle of the cabinet.

16 **Q The middle door?**

17 A The middle door.

18 **Q Mr. Dees was sitting in that chair?**

19 A Yes.

20 **Q And what is this -- appears to be some**
 21 **type of object here and it's facing -- the**
 22 **control panel would be on the left of the**
 23 **sketch, bottom left?**

99

1
 2 (Whereupon, Plaintiff's Exhibit
 3 Number 16 was marked for identification
 4 and copy of same is attached hereto.)

5
 6 BY MR. KILBORN:

7 **Q Mr. Brookshire, let me give you a copy**
 8 **of a document marked Plaintiff's Exhibit 16 and**
 9 **ask you if you would look at the front and back**
 10 **of that and tell me if you recognize either the**
 11 **front or the back.**

12 A (Witness reviews document.) I've never
 13 seen this document.

14 **Q Do you know who drew the sketch on the**
 15 **back?**

16 A No.

17 **Q Do you know what that's a sketch of?**

18 A It's the control cabinet upstairs.

19 **Q Is it accurate?**

20 A Is this sketch saying that the doors
 21 were open or the doors were closed?

22 **Q All I know is that I was given that**
 23 **sketch, so I can't answer your question. My**

98

1 A I don't recall that object being
 2 there. I remember the chair being back up
 3 against the cabinet, the middle door, facing
 4 forward.

5 **Q Was the back of the chair touching the**
 6 **middle door?**

7 A I couldn't tell you exactly if it was
 8 touching the door or not. I know it was close
 9 to back up towards the middle of the door -- or
 10 middle door.

11 **Q How far in your judgment?**

12 A It was pretty close to the door.

13 **Q Inches?**

14 A Probably four inches or less.

15 **Q And was the chair in the position**
 16 **indicated on the drawing that Mr. Dees was**
 17 **sitting in?**

18 A The position I can recall was the chair
 19 was facing parallel going off the platform which
 20 it's sitting on, not angled, parallel in the
 21 direction of the platform up towards the middle
 22 door.

23 **Q So the chair was sitting square on --**

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<p>1 up against or close to the middle door facing</p> <p>2 directly toward you?</p> <p>3 A Correct.</p> <p>4 Q All right. And that's as opposed to</p> <p>5 being at the angle it appears in the sketch?</p> <p>6 A Correct.</p> <p>7 Q And you did not see some object that</p> <p>8 appears at the lower left of that sketch?</p> <p>9 A I don't recall any object being there.</p> <p>10 There could have been a wire spool or something</p> <p>11 off maybe close to the cabinet or off to the</p> <p>12 side but I didn't see that.</p> <p>13 Q You did not see a wire spool?</p> <p>14 A If that's what that drawing is supposed</p> <p>15 to be, I didn't see that.</p> <p>16 Q How about taking your pen there and</p> <p>17 drawing a circle around what appears to be a</p> <p>18 wire spool?</p> <p>19 A (Witness complied.)</p> <p>20 Q And draw a little line around there and</p> <p>21 just put a line to your initials and today's</p> <p>22 date so we'll know that's you today instead of</p> <p>23 at the time it was drawn.</p> <p style="text-align: right;">101</p>	<p>1 A What I can tell what the chair looked</p> <p>2 like it's an office chair. It came from the</p> <p>3 office.</p> <p>4 Q Was that the first time you'd ever seen</p> <p>5 that chair?</p> <p>6 A I don't recall seeing -- I've seen</p> <p>7 ladders. I've seen ladders there, but I don't</p> <p>8 recall seeing that specific chair sitting there</p> <p>9 right there in front of the door.</p> <p>10 Q So that would have been an unauthorized</p> <p>11 chair?</p> <p>12 A Yeah, because the office chairs are not</p> <p>13 supposed to leave the office.</p> <p>14 Q All right.</p> <p>15 A Unless they have assigned chairs in</p> <p>16 break areas or conference rooms or something</p> <p>17 like that.</p> <p>18 Q Had that chair ever been there before?</p> <p>19 A Not that I can recall. Like I said,</p> <p>20 all I've ever seen there has been a ladder.</p> <p>21 Q And immediately after the incident</p> <p>22 where you saw Mr. Dees in the chair asleep was</p> <p>23 the chair removed?</p> <p style="text-align: right;">103</p>
<p>1 A (Witness complied.)</p> <p>2 Q And that object you do not recall</p> <p>3 seeing was there?</p> <p>4 A No, sir.</p> <p>5 Q All right. Would your testimony be</p> <p>6 that it was not there?</p> <p>7 A It was not there.</p> <p>8 Q Okay. Do you know who drew the sketch</p> <p>9 that shows it there?</p> <p>10 A No idea.</p> <p>11 Q What would a wire spool be doing there?</p> <p>12 A Maybe if they had made some engineering</p> <p>13 changes or some wiring changes inside this</p> <p>14 cabinet and they had a wire spool there to run</p> <p>15 input bits or something. I don't know.</p> <p>16 Q There would be no other purpose for a</p> <p>17 wire spool to be there?</p> <p>18 A (Witness shakes head.)</p> <p>19 Q You have to say yes or no.</p> <p>20 A No.</p> <p>21 Q What was the chair doing there?</p> <p>22 A That's a good question.</p> <p>23 Q Where did the chair come from?</p> <p style="text-align: right;">102</p>	<p>1 A After the fact? After time passed?</p> <p>2 Q Right.</p> <p>3 A Yeah.</p> <p>4 Q Who removed it?</p> <p>5 A I'm not sure. I don't know who removed</p> <p>6 it.</p> <p>7 Q That would have taken place February</p> <p>8 14, 2007. How long after that approximately</p> <p>9 would it have been removed?</p> <p>10 A I can't recall that, sir. I mean, I</p> <p>11 didn't remove the chair. I didn't tell my</p> <p>12 people to remove the chair. So I can't account</p> <p>13 for who removed the chair and when it actually</p> <p>14 was removed. I don't know.</p> <p>15 Q So the chair was an unauthorized piece</p> <p>16 of equipment?</p> <p>17 A Yeah.</p> <p>18 Q And is your job -- part of your job to</p> <p>19 remove unauthorized equipment from the plant?</p> <p>20 A I've never -- I've never been in charge</p> <p>21 of removing -- we make notes of stuff like that,</p> <p>22 or I've had chairs in -- office chairs come out</p> <p>23 in other break areas where we -- out of break</p> <p style="text-align: right;">104</p>

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<p>1 areas and in places where they shouldn't be. 2 And presuming that we have heard some other 3 people had been sleeping, we removed those 4 chairs immediately. I know there have been some 5 chairs located in other areas and we've removed 6 and disposed of the chairs. 7 Q So are you telling me that it was 8 fairly common to find employees sitting in 9 chairs sleeping? 10 MR. JOHNSON: Object to the form. 11 A No, that wasn't common, but we had 12 found some chairs that we had presumed that 13 people were using for that purpose and we 14 disposed of the chair. 15 Q To sleep in a chair? 16 A I'm guessing or having a break in the 17 chair off somewhere where it wasn't supposed to 18 be outside of a standard break area. 19 Q Were there two chairs on that level? 20 A I can't recall. This whole platform up 21 here is a mesh platform. And if you had set the 22 chair anywhere outside of here, your legs would 23 go through the platform.</p> <p style="text-align: right;">105</p>	<p>1 Q And those are the same three doors you 2 saw; correct? 3 A Yeah. 4 Q And the door on the left of the 5 drawing, which side of that door looking at the 6 drawing, left or right, is it hinged in the 7 drawing? 8 A Looking at the drawing? 9 Q Right. 10 A Going by this drawing, I would say it's 11 hinged on the right side looking at the left 12 door. 13 Q All right. Draw an arrow down there 14 and put the word hinged and today's date and 15 your initials. 16 A (Witness complied.) 17 Q Now, and looking at the drawing on 18 the -- regarding the door on the right side of 19 the drawing looking directly at it, which side 20 of that door on the right is that door hinged in 21 the drawing? 22 A Looking at the right door, it's hinged 23 on the left-hand side.</p> <p style="text-align: right;">107</p>
<p>1 Q So you have no information about 2 another chair on that level? 3 A No. I know there was plywood -- 4 there's a piece of plywood up on that mezzanine 5 and I remember there was a ladder but that was 6 on the opposite side. 7 Q Was there a chair on the plywood? 8 A I can't recall, because at the time, 9 our senior director of Engineering Maintenance 10 done a great job. He actually got that stuff 11 cleaned up up there. But I can't recall. I 12 remember there was a ladder there because 13 sometime when they've got to work on those 14 trolleys they've got to pull a ladder out and 15 they can't put a ladder on that wire mesh 16 because it will wobble. So they've got to move 17 that piece of plywood around if they've got to 18 work on a trolley. But another chair... 19 Q Looking at Plaintiff's Exhibit 16, the 20 reverse side, the sketch, and looking directly 21 at the control panel, you see three doors, do 22 you not? 23 A Correct.</p> <p style="text-align: right;">106</p>	<p>1 Q Go ahead and write hinged. 2 A (Witness complied.) 3 Q And the door in the middle is hinged on 4 its left or right side looking at the drawing? 5 A Looking at the drawing the handle is on 6 the left-hand side of the door, so it would have 7 to be hinged on the right. 8 Q Okay. Now, I've heard that somehow or 9 another Mr. Dees had used the doors to provide a 10 hiding place. Is that your recollection? 11 A My recollection is at the time of this 12 incident the doors may have been cracked open 13 because sometimes Maintenance doesn't completely 14 shut the doors so they can easily access the 15 panel. But my recollection was the doors were 16 mostly shut. I can't account if they were 17 exactly locked shut but they were mostly shut. 18 As far as him using that routinely and opening 19 the doors to hide, I don't know. 20 Q You didn't see door panels -- excuse 21 me -- you didn't see doors open to the extent 22 that you thought they were being used by 23 Mr. Dees as a blind to hide behind?</p> <p style="text-align: right;">108</p>

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<p>1 MR. JOHNSON: Object to the form.</p> <p>2 A What I can tell you is the day of the</p> <p>3 incident that I seen him I can't tell you</p> <p>4 whether the doors were completely locked or not,</p> <p>5 but they weren't wide open.</p> <p>6 Q Well, in your opinion, since you were</p> <p>7 the only one there besides Mr. Dees, were the</p> <p>8 doors positioned so they made a blind to assist</p> <p>9 in hiding?</p> <p>10 MR. JOHNSON: Object to the form.</p> <p>11 A I can't really see how opening these</p> <p>12 doors hides him from anything.</p> <p>13 Q I can't either, but that's not my</p> <p>14 question.</p> <p>15 A This is the third floor, and when</p> <p>16 you're down here, this door is going to hide you</p> <p>17 from a crane coming at you and that door hides</p> <p>18 you from an elevator. So there's really...</p> <p>19 Q So if you wanted to hide, you wouldn't</p> <p>20 open the door panels looking at this drawing on</p> <p>21 the left or right because the visibility would</p> <p>22 be --</p> <p>23 A Down below.</p> <p style="text-align: right;">109</p>	<p>1 hide Mr. Dees while he was sleeping?</p> <p>2 A It's not my testimony. I mean, what I</p> <p>3 can tell you I can account for is how I</p> <p>4 recollect the chair being positioned and how I</p> <p>5 remember the doors being.</p> <p>6 Q And you were the only one there besides</p> <p>7 Mr. Dees?</p> <p>8 A Correct.</p> <p>9 Q Do you know where Hyundai got</p> <p>10 information that two doors on the control panel</p> <p>11 were used as a blind to hide Mr. Dees?</p> <p>12 A No.</p> <p>13 Q And, in fact, as you told me, if you</p> <p>14 had opened the control panel doors to use them</p> <p>15 as a blind on the left and right doors looking</p> <p>16 at the drawing, it wouldn't be hiding you from</p> <p>17 visibility anyway because the visibility is from</p> <p>18 the front not the side?</p> <p>19 A Visibility is from the bottom.</p> <p>20 Q As a matter of fact, if you're standing</p> <p>21 over here on the right of the drawing, you're</p> <p>22 going to fall off into an abyss because there's</p> <p>23 nothing there, is there?</p> <p style="text-align: right;">111</p>
<p>1 Q -- down below --</p> <p>2 A Correct.</p> <p>3 Q -- looking up and there's no door panel</p> <p>4 to hide you there?</p> <p>5 MR. JOHNSON: Object to the form.</p> <p>6 A You're hidden by this floor plate. You</p> <p>7 can't see through it because it's not mesh.</p> <p>8 Q Does it appear to you in that sketch on</p> <p>9 the reverse of Exhibit 16 that one has drawn the</p> <p>10 left and right doors to make it appear they were</p> <p>11 open to the extent that maybe they would provide</p> <p>12 some cover or a blind of some type?</p> <p>13 MR. JOHNSON: Object to the form.</p> <p>14 A To me, it just looks like somebody has</p> <p>15 drawn an electrical cabinet with the doors open</p> <p>16 with a chair in it, and that to me doesn't -- to</p> <p>17 me, I mean, they could have been looking at a</p> <p>18 problem in either cabinet and left the door open</p> <p>19 for all I know. I mean, I -- as far as somebody</p> <p>20 setting something up like that, I don't know.</p> <p>21 Q So is it your testimony that -- is it</p> <p>22 your testimony that two of the doors on the</p> <p>23 control panel were opened and used as a blind to</p> <p style="text-align: right;">110</p>	<p>1 A There's a little bit of an entranceway</p> <p>2 and then right here is an elevator that brings</p> <p>3 the trolleys up.</p> <p>4 Q That elevator is just an open area,</p> <p>5 isn't it?</p> <p>6 A Right.</p> <p>7 Q Maybe, what, 15 by 15?</p> <p>8 A Probably.</p> <p>9 Q So if somebody was standing there</p> <p>10 they'd be talking to St. Peter?</p> <p>11 A Yeah, they'd fly off.</p> <p>12 Q So if Mr. Dees was trying to make a</p> <p>13 blind out of the control panel doors, he would</p> <p>14 have had to somehow or another taken the door</p> <p>15 off and stuck it in front of him, wouldn't he?</p> <p>16 MR. JOHNSON: Object to the form.</p> <p>17 A To me, it's the approach of it. I</p> <p>18 mean, you access it -- like if you -- this</p> <p>19 walkway, there's a walkway or trolley</p> <p>20 entranceway that comes down here. If you were</p> <p>21 over here, like if you accessed and came up to</p> <p>22 this elevator and came up over here and you were</p> <p>23 right here and that door was open, that would</p> <p style="text-align: right;">112</p>

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<p>1 conceal him from there. But if you came around 2 the front, then you would see him. Back over 3 here, there's nothing here, and then you access 4 from the front or the bottom. But the bottom is 5 hidden by the floor plate.</p> <p>6 Q You came up directly -- you would have 7 been facing Dees, correct, and facing the 8 control panel?</p> <p>9 A Correct. I was off -- maybe like if it 10 was here, I was a little off coming in at this 11 angle.</p> <p>12 Q So when you came up, you could clearly 13 see him?</p> <p>14 A Yeah.</p> <p>15 Q He wasn't behind a blind or anything?</p> <p>16 A No.</p> <p>17 Q And I know there are quite a bit of 18 scuff marks on that plate in front of the 19 control panel. What causes that?</p> <p>20 A Scuff marks on the plate?</p> <p>21 Q Scuff marks, yeah.</p> <p>22 A I don't know. I mean, depends on what 23 the Maintenance guys do over there. Like I</p> <p style="text-align: right;">113</p>	<p>1 the panels because that's the easiest way to 2 look for splits and wrinkles is from the 3 backside of the panel. I had an LED flashlight 4 with me shining through there checking the 5 panels. I had a flashlight in one hand and a 6 stone in the other. And then I put the stone 7 away because I was going over there to check -- 8 check -- because we were running them on the 9 press at the time, so they were coming in on the 10 entry lane over here.</p> <p>11 Q That would be on the left side of the 12 drawing look at it?</p> <p>13 A Yes. And I came and I -- and that's 14 the first lane. And that would be the first 15 lane.</p> <p>16 Q So you're writing the words first lane 17 on there?</p> <p>18 A Yeah.</p> <p>19 Q Make sure you put a date by anything 20 you write on there.</p> <p>21 A Okay. And you've got two lanes. 22 You've got an entry lane that comes in here and 23 then a -- where the trolleys are coming down</p> <p style="text-align: right;">115</p>
<p>1 said, I've seen ladders over there. I have no 2 idea. Multiple things cause scuff marks. I 3 mean, down on our other floor, we've got scuff 4 marks on our platforms from laying scrap panels 5 down. Every time you lay those panels down it 6 chips the paint and flakes the paint.</p> <p>7 Q And describe for me your actions in 8 coming up to the third floor where Mr. Dees was, 9 or the third level -- you call it a level or a 10 floor?</p> <p>11 A Third floor, third level.</p> <p>12 Q Describe what happened as you came up 13 there.</p> <p>14 A I was coming up the third floor, like I 15 said earlier, to check on some CM side outer 16 right-hand panels for splits and waves. I come 17 in through the entranceway there at the stairway 18 and came over between the panels to the row 6 19 and row 7 because that's their storage lane for 20 those panels. And I wanted to check the panels 21 that we had in there to see if we had good 22 panels to get to our customer. And I was coming 23 between the lanes to look at the backsides of</p> <p style="text-align: right;">114</p>	<p>1 this lane, and then you've got a return lane 2 where empty trolleys are going down to this 3 elevator that goes to the presses. And that 4 circles back around actually above this area 5 here. And I was coming in here at the sixth 6 lane if you're looking at it from this way -- 7 the sixth lane and the seventh lane.</p> <p>8 Q And you're putting the letters sixth 9 and seventh there?</p> <p>10 A Yeah.</p> <p>11 Q Go ahead and put your initials and date 12 there.</p> <p>13 A And I was coming down in between these 14 lanes with the flashlight checking these 15 panels. I come to the end, and it's kind of 16 hard. You've got to flip this around. But 17 there's two -- two lanes. You've got your lane 18 going around from the reworks station coming up 19 from the elevator. It comes up and comes across 20 right in front of here. And then you have the 21 other lane that comes off 6 and 7 to go to the 22 drop down station for the elevator in the 23 opposite direction. So I was wanting to check</p> <p style="text-align: right;">116</p>

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<p>1 panels and make sure we had good panels going to 2 the customer. And then that's when I had to 3 come to a stop because we had panels making lane 4 changes and that's when I looked over there and 5 seen Leon over there. And I was probably 30 6 feet right there at the end, because it's 7 probably from -- towards the end of the lane 8 right here to there it's about 30 feet, 25 to 30 9 feet. Somewhere around in there. And then this 10 went by and I had to wait for the other lane to 11 go by. And then I crossed through and went 12 here, and that's probably 15 to 20 feet. Right 13 in there in the middle I squelched my radio. I 14 turned my radio up to squelch it. Because I had 15 called the guys down on the floor to let them 16 know what I had seen as far as quality issues. 17 Then I was crossing across to go here. And then 18 I seen Leon and I squelched my radio. Kind of 19 like, hey, here's the alarm clock, wake up, wake 20 up. So I was hurrying. Once the panels came 21 through, I went over here to check the first 22 trolleys that were coming through. We'd just 23 run them off the press and they'd just came up.</p> <p style="text-align: right;">117</p>	<p>1 told his Team Leader what I saw. 2 Q Well, when you saw him last up there on 3 the third level, he was looking sleepy and 4 groggy? 5 A He had the look of somebody just seen 6 him doing something he wasn't supposed to be 7 doing. To me, he appeared to be fishing for 8 something to do, the reason why he was up 9 there. Because normally we don't go up to the 10 third level unless there's a problem. 11 Q So he was -- 12 A Normally nobody is up there unless we 13 had a problem. We didn't have a trolley problem 14 because we were running fine. We were just 15 waiting on the panels to make it to the Weld 16 Shop. We was running them off the press. 17 Q So Mr. Dees was basically creating a 18 ruse acting like he was doing something when he 19 really wasn't? 20 MR. JOHNSON: Object to the form. 21 A What it appeared to be to me was he had 22 came out of a stance off that chair having a 23 surprised look on his face that I was up there.</p> <p style="text-align: right;">119</p>
<p>1 I was circling around going through here waiting 2 for those to come by and I was going to this 3 first -- I think there was probably five -- five 4 right in here. And then I was checking the 5 quality on them, going around the backside of 6 the panel and checking the quality. 7 After that that's when I noticed he had 8 gotten up out of his chair and grabbed what they 9 call -- we call them fishing poles, but they're 10 actually brake release poles. They use them on 11 the trolleys. We've got a mechanical brake on 12 there that actually releases the trolleys so 13 Maintenance can move the trolley out of 14 position. And I had seen him grab that brake 15 pole. He like jumped up out of the chair and he 16 grabbed the brake pole, and I'm wondering why he 17 grabbed the brake pole because we weren't having 18 any problems. All the trolleys were moving at 19 the time. And then after point after I made 20 that, I went back by and he was over here just 21 walking around looking at trolleys when I walked 22 back by and went back down the stairs. And then 23 within that next half an hour, that's when I</p> <p style="text-align: right;">118</p>	<p>1 Q And you say surprised look on his face? 2 A Kind of like where did I come from kind 3 of a look. 4 Q And the first time you saw Mr. Dees 5 sitting in the chair how many feet away were 6 you? 7 A 25. 20, 30. Somewhere right around in 8 there. 9 Q How close did you get to him? 10 A Probably around 15 to 20. Because 11 you've got the two lanes that run through here, 12 the return lane from rework and then the feed 13 lane. And I went in between those lanes. 14 Q And you say when you -- what did you 15 say you did with your radio? 16 A Squelched it. 17 Q Squelched your radio. What did he do? 18 A He didn't do anything. 19 Q Nothing? 20 A (Witness shakes head.) 21 Q And what's the next thing you saw him 22 do? 23 A That's when -- like I said, I went</p> <p style="text-align: right;">120</p>

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<p>1 through there and squelched my radio. And I was 2 on my mission to get these panels to the Weld 3 Shop, because our priority is to make sure the 4 Weld Shop doesn't run out of parts, don't shut 5 the Weld Shop down. So we're going through 6 here, cutting through here -- well, not we're -- 7 I'm cutting through here, and I just squelched 8 my radio. And I'm over here getting ready to 9 check these panels and make sure they're okay. 10 I go over here and flashlight them from the 11 front side and then go to the backside. And 12 when I go to the backside obviously the door 13 openings are there, and that's when I realized 14 he -- he was like up out of the chair grabbing 15 one of the fishing poles. 16 Q Well, did he like jump out of the 17 chair? 18 A He was already up out of the chair just 19 moving around. He had one of the poles in his 20 hand. 21 Q Where had he gotten the pole from? 22 A Normally the Maintenance guys will 23 leave them like laying with the -- there's like</p> <p style="text-align: right;">121</p>	<p>1 Q That's the kind of look you saw? 2 A Yeah. Kind of (indicating). 3 Q And when you first saw him, he was dead 4 asleep, wasn't he? 5 MR. JOHNSON: Object to the form. 6 A The position I seen him in, he appeared 7 to be asleep just like I made in my statement 8 with his hat on and the way his legs were 9 extended and the posture that he exhibited in 10 the chair. 11 Q Did you see his eyes? 12 A No, I didn't see his eyes. 13 Q Were his eyes opened or closed? 14 A I can't honestly tell you that because 15 he had a hat on, because we've got to wear a 16 bump cap. And he had the hat on. He was 17 positioned like this (indicating). 18 Q And he was sitting in the chair? 19 A Yes. 20 Q And when you made your radio make that 21 chirping sound, he didn't move? 22 A I didn't see him move. 23 Q Okay. Well, he didn't move as far as</p> <p style="text-align: right;">123</p>
<p>1 a fence over here. They'll leave them laying on 2 the floor up against the fence or leave them on 3 this side laying up against the fence like on 4 the mesh floor leaning up against the guardrail. 5 Q So was he looking real guilty, wasn't 6 he? 7 MR. JOHNSON: Object to the form. 8 A I can't say a person is guilty. I can 9 just say that the person -- that Mr. Dees 10 appeared to me that he had this surprised look 11 on his face, where did I come from. 12 Q And you knew Mr. Dees, didn't you? 13 A Yeah, I knew Mr. Dees. 14 Q So you would know what a surprised look 15 on his face was; right? 16 MR. JOHNSON: Object to the form. 17 A How personal are you saying I knew 18 him? Because I talked to him as a person. But 19 as an expert knowing all of his integral aspects 20 of his life, I don't know that. But I can tell 21 when somebody kind of gives a look like where 22 did you come from or what are you doing here 23 kind of look.</p> <p style="text-align: right;">122</p>	<p>1 you know? 2 A Right. 3 Q So that didn't wake him up, the 4 chirping sound? 5 A (No response.) 6 Q Excuse me? 7 A At that point I guess it didn't because 8 he didn't move when I squelched my radio. Like 9 I said, I walked by and I squelched the radio. 10 And if anybody's ever been up there, you can 11 feel vibrations in that platform when you're 12 walking. I don't know if the vibrations 13 actually got him or what happened, but I know I 14 squelched my radio, no movement, and I was on my 15 way to go check the panels. I did not stay 16 there and stare at him to see if he got up after 17 I squelched the radio. 18 Q Why didn't you go over there and say, 19 hey, Leon, wake up? 20 A Because at the time I thought the 21 squelching of the radio and me walking across 22 the platform would get him up. And I was, like 23 I said, on my way to check the panels and make</p> <p style="text-align: right;">124</p>

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<p>1 sure that they were on the way to the Body Shop</p> <p>2 and make sure we were making good quality panels</p> <p>3 to go to the Body Shop.</p> <p>4 Q Well, you knew that chirping the radio</p> <p>5 hadn't woken him up, didn't you?</p> <p>6 MR. JOHNSON: Object to the form.</p> <p>7 A I'm not for sure.</p> <p>8 Q Well, you didn't see any activity?</p> <p>9 A I knew it chirped and I didn't stand</p> <p>10 there and stare at him.</p> <p>11 Q You did not see him wake up, did you?</p> <p>12 A No.</p> <p>13 Q All right, sir. As far as you knew</p> <p>14 when you walked back off, he was still asleep,</p> <p>15 wasn't he?</p> <p>16 MR. JOHNSON: Object to the form.</p> <p>17 A From my recollection you can say that.</p> <p>18 Q And he only was awake as far as you</p> <p>19 knew is when you came back and he was up</p> <p>20 pretending like he was doing something with the</p> <p>21 pole?</p> <p>22 A He had the pole in his hand. Correct.</p> <p>23 Q Is it noisy up there with the trolleys</p> <p style="text-align: right;">125</p>	<p>1 danger, wouldn't it?</p> <p>2 MR. JOHNSON: Object to the form.</p> <p>3 A It could put him in danger.</p> <p>4 Q You left where you saw him sleeping</p> <p>5 without making sure he was awake or attempting</p> <p>6 to wake him?</p> <p>7 A I did attempt to wake him, and I didn't</p> <p>8 leave the area. And you could rest assured if</p> <p>9 he was still in that chair after I looked at</p> <p>10 those two racks or two trolleys of panels, I</p> <p>11 would have went over there and talked to him.</p> <p>12 Q But you didn't?</p> <p>13 A He was already up.</p> <p>14 Q Well, when you found him already up why</p> <p>15 didn't you go over and say something to him</p> <p>16 about what you had seen?</p> <p>17 A Because I'm not his direct supervisor.</p> <p>18 That's not for me to address.</p> <p>19 Q Well, you were his supervisor on this</p> <p>20 shift, weren't you?</p> <p>21 A No, no.</p> <p>22 Q I thought you were substituting for</p> <p>23 the --</p> <p style="text-align: right;">127</p>
<p>1 and everything?</p> <p>2 A The trolleys are pretty quiet. Down</p> <p>3 towards the presses is where the noise is at.</p> <p>4 Q Did you wear earplugs?</p> <p>5 A Up on the third floor you don't have to</p> <p>6 wear them, or the SOP booth. But down around</p> <p>7 the press areas, you're supposed to wear</p> <p>8 earplugs.</p> <p>9 Q Did you have earplugs?</p> <p>10 A No. Because at that time hearing</p> <p>11 protection wasn't mandatory yet. I believe it</p> <p>12 was around late spring to early summer is when</p> <p>13 they -- Safety mandated hearing protection.</p> <p>14 Q Did he have earplugs?</p> <p>15 A I couldn't vouch for that at that</p> <p>16 time. It depends on what type of hearing</p> <p>17 protection he might have had, it would be hard</p> <p>18 to tell. If he had the ones without the cords</p> <p>19 in it, they could be up in his ears and I</p> <p>20 wouldn't see them unless I was really close to</p> <p>21 him.</p> <p>22 Q Well, you would agree that sleeping on</p> <p>23 the job would certainly put Mr. Dees himself in</p> <p style="text-align: right;">126</p>	<p>1 A Assistant manager. That would be</p> <p>2 correct. But Maintenance is not a direct report</p> <p>3 to me. Greg Prater is his direct report.</p> <p>4 Q But you did not report to Mr. Prater,</p> <p>5 did you?</p> <p>6 A Oh, yeah, I did the next day, along</p> <p>7 with my senior manager, Craig Stapely.</p> <p>8 Q But not then?</p> <p>9 A No. That was one in the morning. I</p> <p>10 wasn't going to call Craig -- or Greg and wake</p> <p>11 him up in the middle of the night. Now, if</p> <p>12 Kevin called him maybe he did, but I don't know</p> <p>13 if Kevin did or not. But I reported it to Kevin</p> <p>14 within a half hour.</p> <p>15 Q And how long did you observe him</p> <p>16 sitting in this sleeping position?</p> <p>17 A To be honest with you about the time I</p> <p>18 come out of these two lanes and come through</p> <p>19 there and squelched my radio, from the time I</p> <p>20 went through here and cut between those trolleys</p> <p>21 and made it over there, it couldn't have been</p> <p>22 probably more than a minute. A minute to two</p> <p>23 minutes at the most.</p> <p style="text-align: right;">128</p>

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<p>1 Q You observed him sleeping for two 2 minutes? 3 A Probably around that time frame. 4 Q Did he have a cell phone in his hand? 5 A Not that I could see. 6 Q What time of night was it? 7 A Probably right around one o'clock. It 8 was after lunch on second shift. 9 Q One a.m.? 10 A Yeah. 11 Q And you say he had his head down? 12 A Yeah. 13 Q Had he made a pillow of some type? 14 A I didn't see any type of pillow. 15 Q Was he wearing a jacket? 16 A I can't recall whether he was or 17 wasn't. 18 Q Did he have on his sleeves? 19 A I can't recall whether he did or 20 didn't. You're supposed to. I can tell you 21 that. If he had his jacket on, I would not have 22 been able to tell if he had sleeves on. 23 Q Had he somehow or another fashioned his</p> <p style="text-align: right;">129</p>	<p>1 eating with the guys that went on the second 2 lunch at 12:15. I usually only take about a 15- 3 to 20-minute lunch. 4 Q What time did you finish lunch? 5 A Probably around 12:30, 12:40. And then 6 I went out to check the press and see if they 7 were getting it started making those parts out, 8 calling the AM down at the Body Shop and let him 9 know we had the job in the press and we were 10 trying to make some side outers. 11 Q So you have a clear recollection it was 12 after you had finished your lunch around 13 12:30 a.m.? 14 A Yeah. 15 Q When I was there yesterday I saw these 16 huge big lights. Were the lights on? 17 A They're spotty. They're energy-saving 18 lights. So spontaneously some of them will shut 19 off for energy consumption savings. 20 Q Were the lights on that night? 21 A Some were. 22 Q How about the lights around the control 23 panel?</p> <p style="text-align: right;">131</p>
<p>1 jacket into some type of pillow? 2 A Not that I could recall. I never seen 3 his jacket in any way, shape, or form rolled up 4 around him or anything. 5 Q What makes you think that the time was 6 around one a.m.? 7 A It was after lunch. It was after lunch 8 on night shift. 9 Q And lunch on night shift is when? 10 A The way it's broke up is typically 11 between 11:15 and midnight and the other one is 12 from midnight to 12:45. 13 Q So there are two 45-minute lunch breaks 14 in the middle of the night? 15 A That's the way we have it for 16 Production. Maintenance is typically right 17 around 11:30 to 12:15. 18 Q And your testimony is it was after the 19 lunch break? 20 A Yeah, it was after everybody had ate. 21 Q Anything that makes you particularly 22 recollect that? 23 A I had personally myself just got done</p> <p style="text-align: right;">130</p>	<p>1 A To honestly tell you if those were on 2 at that point right above that panel, I can't 3 tell you that for sure. I remember what I seen 4 Leon doing. 5 Q I believe I asked you who drew this 6 sketch on the reverse of Exhibit 16. 7 A Yeah, you did. 8 Q And did you tell me? 9 A I didn't know who drew it. I don't 10 know. 11 Q And did you -- I forgot. I apologize. 12 Is that an accurate sketch of what you saw? 13 A Yeah, it's pretty accurate other than 14 the fact, you know, to say these doors were 15 parallel to the way the floor is facing, I 16 couldn't tell you that. But I said I couldn't 17 tell you whether it was actually locked or 18 unlocked. They might have been cracked open. 19 It's not unusual for those Maintenance guys to 20 leave these doors cracked open or laying open a 21 little bit. 22 Q Well, the way the sketch is drawn it 23 looks like the doors were positioned to make a</p> <p style="text-align: right;">132</p>

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<p>1 blind, and you said that wasn't the case?</p> <p>2 MR. JOHNSON: Object to the form.</p> <p>3 A What I can recall, I can't tell you</p> <p>4 whether they were open. I'm positive they</p> <p>5 weren't open parallel to the floor plate, but</p> <p>6 they could have been open some.</p> <p>7 Q But not to make a blind?</p> <p>8 MR. JOHNSON: Object to the form.</p> <p>9 A As far as somebody intentionally using</p> <p>10 it for a blind, I don't know.</p> <p>11 Q What's your opinion?</p> <p>12 MR. JOHNSON: Object to the form.</p> <p>13 A My opinion is that to me it really</p> <p>14 doesn't make a difference what you're doing with</p> <p>15 the doors. I mean, if you're in there working</p> <p>16 on the equipment, you're in there working on</p> <p>17 it. But as far as making a blind out of it, it</p> <p>18 really doesn't make a difference, like I said,</p> <p>19 unless you're coming back here from this</p> <p>20 elevator lift station.</p> <p>21 Q Did you ever speak to Mr. Dees at all?</p> <p>22 A When?</p> <p>23 Q During this incident.</p> <p style="text-align: right;">133</p>	<p>1 A No.</p> <p>2 Q It's the second to last paragraph.</p> <p>3 A This one right here; right?</p> <p>4 Q On 37 it says, last sentence, not long</p> <p>5 after this, Jim witnessed Leon walking down the</p> <p>6 stairs. Is that true?</p> <p>7 A I'm trying to remember. I was hurrying</p> <p>8 back downstairs. Probably in the time frame</p> <p>9 which I talked to Kevin when I was talking to</p> <p>10 Kevin, he came down, because down there in</p> <p>11 the -- on the second floor, we have the rework</p> <p>12 station, and I was down there with those guys</p> <p>13 checking through panels and trying to sort out</p> <p>14 the bad ones from the good ones to supply the</p> <p>15 Body Shop because the entryway to the Body Shop</p> <p>16 is right there on the second floor. And from</p> <p>17 what I can recall, we were out there sorting</p> <p>18 panels. And to say he was walking down</p> <p>19 immediately after I seen him, I can't say that,</p> <p>20 but I can recall that he came down at a later</p> <p>21 time frame. But to say that he done it right</p> <p>22 after I seen him, I can't recall that.</p> <p>23 Q Well, let me just read what it says.</p> <p style="text-align: right;">135</p>
<p>1 A Later on that evening. I didn't see</p> <p>2 him much the rest of the evening after I ran</p> <p>3 into him upstairs and went downstairs because --</p> <p>4 trying to get that side outer to run. I believe</p> <p>5 also that night we had some palletizing problems</p> <p>6 on the other press as well. As far as being</p> <p>7 there and being focused around Leon and talking</p> <p>8 to him in particular, no, I didn't. Like I</p> <p>9 said, he's not a direct report to me, so...</p> <p>10 Q And did you see him walking down the</p> <p>11 stairs after you saw him sleeping?</p> <p>12 A I didn't -- I didn't pay attention. I</p> <p>13 seen he was up and he was moving around. I was</p> <p>14 heading back downstairs to make sure the press</p> <p>15 was running.</p> <p>16 Q Well, I notice in your written</p> <p>17 statement there, Exhibit 13, Bates number 37</p> <p>18 says not long after this, Jim witnessed Leon</p> <p>19 walking down the stairs. Is that true?</p> <p>20 A Which one was it?</p> <p>21 Q Second to last paragraph, number 37.</p> <p>22 A (Witness reviews document.)</p> <p>23 Q See where I'm talking about?</p> <p style="text-align: right;">134</p>	<p>1 It just says not long after this, Jim witnessed</p> <p>2 Leon walking down the stairs. My question is,</p> <p>3 is that a true statement?</p> <p>4 A Yeah, that's a true statement. But,</p> <p>5 like I said, if you are saying immediately, I</p> <p>6 can't say he came down immediately, but he came</p> <p>7 down before I talked to Kevin.</p> <p>8 Q Did you say anything to him?</p> <p>9 A To Leon or Kevin?</p> <p>10 Q Leon.</p> <p>11 A I didn't say anything to Leon. I just</p> <p>12 said he's not a direct report to me, so it's</p> <p>13 not...</p> <p>14 Q Did Kevin say anything to him to your</p> <p>15 knowledge?</p> <p>16 A To my knowledge, no. I don't know.</p> <p>17 Q And was that the last you had to do</p> <p>18 with this sleeping incident other than the</p> <p>19 signing of the two statements that we've seen?</p> <p>20 A Yeah.</p> <p>21 Q Did you attend any disciplinary</p> <p>22 hearings?</p> <p>23 A No.</p> <p style="text-align: right;">136</p>

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<p>1 Q Did you give any further statements or 2 interviews? 3 A No. 4 Q Did anyone, other than after this 5 lawsuit was filed, ever interview you or talk to 6 you about what you saw? 7 A I had one of the Korean -- Korean 8 Maintenance manager he asked me, you know, what 9 I had seen, and I told him what I seen. As far 10 as him being involved in the disciplinary 11 process, I don't know if he was or not. But 12 Mr. Mun came and spoke with me about it. 13 Q And was that shortly after Mr. Dees got 14 terminated or before? 15 A I believe it was before. 16 Q I think Mr. Dees was terminated on or 17 about the 26th of February. You think it was 18 before that? 19 A Yeah, I believe so. 20 Q Let's maybe relate to that a date you 21 might remember. What was the date of your 22 youngest's birth, the one that's seven months 23 old now you said?</p> <p style="text-align: right;">137</p>	<p>1 A He said he wanted to talk to me in the 2 office, and we went in the conference room and 3 closed the door and he just asked me about it. 4 Q There in the Stamping Plant? 5 A Yeah. 6 Q So there's some type of office there in 7 the plant? 8 A Yeah. We've got -- in our Stamping 9 Shop we have two conference rooms. And then in 10 the Maintenance office there's one conference 11 room. 12 Q Was anybody else there when you and 13 Mr. Mun were talking? 14 A Just me and Mr. Mun. 15 Q Did you know why he was asking you 16 about it? 17 A He was just trying to understand what I 18 seen and what I visualized. 19 Q And what did you tell Mr. Mun? 20 A I described the same thing to him what 21 I told you, I went up there to check on side 22 outer panels. Then I showed him -- I was in 23 there with him and I showed in the chair the</p> <p style="text-align: right;">139</p>
<p>1 A That was in May. 2 Q In May. So we can't date that. 3 What was the occasion when Mr. Mun 4 talked to you and asked you about this? 5 A If the 26th is when he was terminated, 6 it had to be that week of right before when all 7 this -- all the stuff was going on. Like I 8 said, I couldn't honestly tell you when the 9 exact day was that he was terminated because I 10 don't know. And I don't know when all the Team 11 Relations meetings went on with him and stuff 12 with Greg and John and all that. All I can tell 13 you is the stuff I was asked and witnessed. 14 Q Well, the date of your last statement 15 is February 19, 2007. 16 A Correct. 17 Q That's Plaintiff's Exhibit 13. You 18 talked to Mr. Mun after that? 19 A Yeah. 20 Q And how did you happen to be talking to 21 him? 22 A He came up and asked me. 23 Q All right.</p> <p style="text-align: right;">138</p>	<p>1 position I see him in. 2 Q So you actually took him up to the 3 site? 4 A No. I just showed him from a chair 5 there in the conference room. 6 Q Okay. What did Mr. Mun say? 7 A He just kind of looked at me. His 8 English isn't very well spoken. So he just kind 9 of looked at me and nodded his head, oh, okay. 10 Q That was it? 11 A Yeah. 12 Q All right. Where is Mr. Greg Prater 13 now? 14 A He had taken a job at some other 15 company up in Tennessee or Kentucky. 16 Q Do you know why he left? 17 A From what I understand, he wasn't happy 18 with what he was doing here. He was wanting to 19 pursue another career, something promotional, or 20 get better options. And the other piece was he 21 was wanting to get closer to home. I think he 22 as one or two kids up in Tennessee. That's what 23 it was, Tennessee.</p> <p style="text-align: right;">140</p>

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<p>1 Q Had you ever heard any discussions 2 between Mr. Prater and Mr. Dees? 3 A I only heard one discussion, and that 4 was the day after we had an incident with Leon 5 where that trolley elevator system I was showing 6 you right here -- the lift station -- him and 7 another employee were working on that around 8 lunchtime, either the day before or two days 9 before. And they had just walked off the job 10 and went to lunch without telling anybody. And 11 we were very close to shutting the Body Shop 12 down. Kevin had to hurry up and go find some 13 other Maintenance Team Members to get that 14 system running before we shut the Maintenance 15 shop down. And the next day Kevin had told 16 Greg, and Greg had asked me to come in the 17 office and was asking me about this incident. 18 And he had called me and my senior manager in 19 there, Craig. And he was talking to me about 20 it. Then it wasn't too long after that he 21 called Leon in there and started asking Leon 22 about it. Leon was like I didn't walk off the 23 F'ing job. He goes, I always do my F'ing job.</p> <p style="text-align: right;">141</p>	<p>1 be present as he asked Leon those questions 2 because I had been there on night shift. I 3 didn't actually know when Leon had left, but I 4 do know that Kevin had to call other people for 5 backup to get the elevator running or we were 6 going to shut the Body Shop down. 7 Q How long before you reported Mr. Dees 8 sleeping did this occur? 9 A This incident here? 10 Q I'm talking about where he used all the 11 profanity. 12 A I think in the conference room office 13 it was the day before. The day before this 14 incident happened. Then the issue with the 15 trolley happened that night -- that night 16 before. All within two days. 17 Q Within two days? 18 A Yeah, a couple of days. 19 Q Was Mr. Prater and Mr. Dees on speaking 20 terms? 21 A I don't know their personal 22 relationship. I mean, he -- obviously Greg 23 was -- Greg was his boss and what I can see I'm</p> <p style="text-align: right;">143</p>
<p>1 And then Greg is like did you tell anybody. 2 Leon was like there wasn't an F'ing problem. I 3 mean, it was -- my boss, he's a preacher, and he 4 got up and walked out. 5 Q What was it, the last thing Mr. Dees 6 said? 7 A He said something about he don't walk 8 off the F'ing job. He tried calling -- let's 9 see. He said he tried calling Kevin on the 10 radio. I forget what he said. He said he tried 11 calling -- I forgot how he said it. I tried -- 12 it had a couple of flavorful words in there, but 13 basically he said he tried getting ahold of 14 Kevin. But without confirmation of getting 15 ahold of Kevin, he still had left with the 16 system down. 17 Q So this was some incident Mr. Dees had 18 left his work area without permission? 19 A I would say so. I mean, he said it was 20 his lunchtime and he's entitled to his lunchtime 21 and he's going to take his F'ing lunch. And he 22 said he tried contacting Kevin and that's -- 23 that's -- but Greg had asked for me and Craig to</p> <p style="text-align: right;">142</p>	<p>1 sure there are assignments and stuff that Leon 2 didn't always agree with that I think Greg asked 3 him to do. But it wasn't nothing out of the 4 ordinary. 5 Q Greg Prater was called a Team Leader. 6 A He was assistant manager. 7 Q Assistant manager. Okay. Was there 8 any kind of disciplinary action about that? 9 A I couldn't tell you. I don't know. 10 Like I said, Greg dealt with that on his own 11 because Craig and I was always if you got some 12 issue, you need to take it behind closed doors 13 and deal with it. It don't need to involve all 14 of us. That's between Greg and John Applegate 15 and Leon. Like I said, Leon is not a direct 16 report to me or Craig. 17 Q Did you ever hear any discussion at 18 that plant about Mr. Dees' National Guard duty? 19 A No. I knew he was in it because him 20 and I had talked personally and I knew he was 21 still in the Reserves, still had duty. 22 Q Since he was not basically -- you were 23 not his direct report how did y'all get in that</p> <p style="text-align: right;">144</p>

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<p>1 conversation?</p> <p>2 A Just being around him on the floor. I</p> <p>3 mean, he's out there with the rest of the guys</p> <p>4 on the floor. I mean, I always try to make sure</p> <p>5 I have a working relationship with people, and,</p> <p>6 you know, even though I didn't have direct</p> <p>7 reports of Maintenance, I'd still try to help</p> <p>8 them get parts and help them get stuff. Because</p> <p>9 the bottom line, their performance affects our</p> <p>10 productivity.</p> <p>11 Q What did Mr. Dees tell you about his</p> <p>12 National Guard?</p> <p>13 A He just told me he was in -- my</p> <p>14 understanding he was in the Reserves and we</p> <p>15 talked a little bit about his military</p> <p>16 background, some time he spent in Korea. And he</p> <p>17 said he still actively does some stuff for the</p> <p>18 military and he has some weekend duties</p> <p>19 sometimes. I didn't know when he went, but I</p> <p>20 knew he was still involved with it.</p> <p>21 Q All right. Any other discussion</p> <p>22 between you and Mr. Dees?</p> <p>23 A I mean, just personable stuff, talking</p> <p style="text-align: right;">145</p>	<p>1 Q No discussion about Mr. Dees?</p> <p>2 A No.</p> <p>3 Q No discussion about you?</p> <p>4 A (Witness shakes head.)</p> <p>5 Q No?</p> <p>6 A No.</p> <p>7 Q Did he know you were in the substance</p> <p>8 abuse program at Hyundai?</p> <p>9 A Greg Prater?</p> <p>10 Q Right.</p> <p>11 A No.</p> <p>12 Q I want to show you a collection of</p> <p>13 documents we've previously marked as Plaintiff's</p> <p>14 Exhibit 9. And there's a Bates number 39. I</p> <p>15 want you to refer to this if you would. That's</p> <p>16 an e-mail transmission dated -- from Greg Prater</p> <p>17 dated February 8, 2007, and it refers to an</p> <p>18 original message from William Ware to</p> <p>19 Mr. Clevenger, copies to Greg Prater. It says,</p> <p>20 Rob, Greg P. and I met with all the TMs in</p> <p>21 question about Leon leaving to go to lunch while</p> <p>22 the lift was down. We came to the consensus</p> <p>23 that a Discussion Planner is needed for the TMs</p> <p style="text-align: right;">147</p>
<p>1 about military or talking about press problems</p> <p>2 or stuff like that.</p> <p>3 Q Tell me, other than the two lawyers</p> <p>4 here today and Mr. Hughes who you've told me</p> <p>5 about, that you've discussed this sleeping</p> <p>6 incident with.</p> <p>7 A Mr. Hughes. And I'm sorry. I</p> <p>8 discussed it with my senior manager, Craig</p> <p>9 Stapely.</p> <p>10 Q Craig Stapely?</p> <p>11 A And discussed it with Mr. Mun and</p> <p>12 discussed it with Greg Prater and John</p> <p>13 Applegate.</p> <p>14 Q When is the last time you talked to</p> <p>15 Greg Prater?</p> <p>16 A It's been when he left. Whenever he</p> <p>17 left. The last day that he was leaving.</p> <p>18 Q So you talked to him the last day he</p> <p>19 was leaving?</p> <p>20 A The last day he left. You know, the</p> <p>21 day before and the last day, just kind of</p> <p>22 shaking his hand and wishing him good luck on</p> <p>23 his new assignment.</p> <p style="text-align: right;">146</p>	<p>1 who left to go to lunch while the lift was down;</p> <p>2 Shane, Drake, and Leon. The TMs performing the</p> <p>3 repair should have waited until help arrived to</p> <p>4 take over the repair. The TL and Leon are not</p> <p>5 on speaking terms and it appears that he blew</p> <p>6 the incident out of proportion and he only</p> <p>7 singled Leon out but for no apparent reason.</p> <p>8 Proper communication and task transfer will be</p> <p>9 the topic of the Discussion Planner. If</p> <p>10 necessary, I can type up all the notes in the</p> <p>11 report, but I didn't think it was necessary if</p> <p>12 Greg and I both agree on the resolution. Let me</p> <p>13 know if I need to. Is that the incident you're</p> <p>14 talking about?</p> <p>15 A Yeah.</p> <p>16 Q Now, I don't see any --</p> <p>17 A I remember Shane being with Leon, too,</p> <p>18 but I don't remember Drake. But I remember Leon</p> <p>19 and Shane.</p> <p>20 Q You testified earlier that Mr. Dees had</p> <p>21 used quite a bit of profanity. You kept using</p> <p>22 the words F'ing. Meaning F-U-C-K-I-N-G; right?</p> <p>23 A Yeah.</p> <p style="text-align: right;">148</p>

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<p>1 Q You said that was throughout that</p> <p>2 conversation.</p> <p>3 A There was damn and hell.</p> <p>4 Q Damn and hell. What other profanity?</p> <p>5 A And shit.</p> <p>6 Q Shit.</p> <p>7 A That's it.</p> <p>8 Q What other profanity?</p> <p>9 A That's the four I can remember.</p> <p>10 Q And, of course, neither you nor</p> <p>11 Mr. Prater and anybody else in that discussion</p> <p>12 used any profanity; would that be true?</p> <p>13 MR. JOHNSON: Object to the form.</p> <p>14 A No, I didn't. Greg didn't use it, and</p> <p>15 Craig definitely didn't use it, and I didn't use</p> <p>16 it either.</p> <p>17 Q Right. So Mr. Dees was out of line in</p> <p>18 your opinion?</p> <p>19 A It was pretty verbally -- I mean,</p> <p>20 normally if a Production Team Member talks like</p> <p>21 that to another Team Member or member of</p> <p>22 management, I'll take corrective action on it.</p> <p>23 What Greg done with it, I don't know. But if a</p> <p style="text-align: right;">149</p>	<p>1 him, kind of like a -- kind of like a team --</p> <p>2 like he tried to lead the guys in kind of a</p> <p>3 negative -- negative way.</p> <p>4 Q Mr. Dees did?</p> <p>5 A Yeah.</p> <p>6 Q So Kevin Hughes is the first person you</p> <p>7 reported the sleeping to; right?</p> <p>8 A Right.</p> <p>9 Q Kevin Hughes is your --</p> <p>10 A He's Maintenance's Team Leader.</p> <p>11 Q Your leader?</p> <p>12 A Greg Prater.</p> <p>13 Q Greg Prater is your leader?</p> <p>14 A No. John Applegate is senior manager</p> <p>15 of Maintenance. Greg Prater reported to John</p> <p>16 Applegate. Kevin Hughes reports to Greg Prater</p> <p>17 and Leon reports to Kevin.</p> <p>18 Q And Kevin is the one that you first</p> <p>19 reported the sleeping to?</p> <p>20 A Correct. Because that's the only</p> <p>21 leadership figure that Maintenance has on night</p> <p>22 shift is Kevin.</p> <p>23 Q And Kevin Hughes is the same person</p> <p style="text-align: right;">151</p>
<p>1 Team Member does that that works for me or any</p> <p>2 member of management that works for me and talks</p> <p>3 to another person like that I get them -- I</p> <p>4 mean, depending on what phase they are in the</p> <p>5 disciplinary process, I'll at least give them a</p> <p>6 Discussion Planner for it. We call them</p> <p>7 Discussion Planners. My boss that's a preacher,</p> <p>8 he's definitely against -- he's a big one</p> <p>9 against --</p> <p>10 Q Your boss would be who?</p> <p>11 A Craig Stapely.</p> <p>12 Q Stapely. And this says the TL and Leon</p> <p>13 are not on speaking terms. Who would that be?</p> <p>14 A That's Kevin Hughes.</p> <p>15 Q And that's the man you reported the</p> <p>16 sleeping incident to first?</p> <p>17 A Correct.</p> <p>18 Q And why weren't Mr. Hughes and Mr. Dees</p> <p>19 on speaking terms?</p> <p>20 A I couldn't -- I mean, I don't know</p> <p>21 their past history or what. I do know that</p> <p>22 Kevin has came to me a couple of times and, you</p> <p>23 know, said that Leon is very standoff-ish to</p> <p style="text-align: right;">150</p>	<p>1 mentioned in this e-mail I just showed you?</p> <p>2 A Yeah. That's correct.</p> <p>3 Q And he would be the TL who wasn't on</p> <p>4 speaking terms with Mr. Dees?</p> <p>5 A (Witness nods head.)</p> <p>6 Q Correct?</p> <p>7 A As far as what their speaking terms</p> <p>8 are, I don't know, but...</p> <p>9 Q Well, that's what this says?</p> <p>10 A Right. He is Leon's Team Leader.</p> <p>11 Q This looks like Mr. William Ware sent</p> <p>12 this. He's the same person that took this</p> <p>13 statement from you?</p> <p>14 A Correct.</p> <p>15 Q So Mr. Ware would have known when he</p> <p>16 took that statement from you that Mr. Kevin</p> <p>17 Hughes and Mr. Dees were not on speaking terms</p> <p>18 according to this?</p> <p>19 A He would be the guy, yeah.</p> <p>20 Q And it says Mr. Dees was singled out</p> <p>21 for no apparent reason. Do you know where that</p> <p>22 came from?</p> <p>23 A (Witness shakes head.)</p> <p style="text-align: right;">152</p>

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<p>1 Q You don't?</p> <p>2 A I mean, I don't know why -- I don't</p> <p>3 know why he would be considered being the one</p> <p>4 singled out. I can tell you I remember Leon had</p> <p>5 been working on it and Shane. I don't recall</p> <p>6 Mr. Drake working on it, but I remember Shane</p> <p>7 and Leon working on that drop.</p> <p>8 Q Well, Shane and Mr. Drake -- what's</p> <p>9 Mr. Drake's first name?</p> <p>10 A That is his first name. It's Drake</p> <p>11 Barefoot.</p> <p>12 Q Shane and Drake Barefoot were not in</p> <p>13 this discussion about this incident that you</p> <p>14 participated in?</p> <p>15 A With Craig? Me and Craig and Greg?</p> <p>16 Q Right.</p> <p>17 A He just called -- I don't know if he</p> <p>18 had already talked to Shane or Drake or who he</p> <p>19 talked to in what order. I know that I was</p> <p>20 there when he had talked to Leon.</p> <p>21 Q Well, this apparently says that Leon</p> <p>22 was singled out as opposed to Shane or Drake,</p> <p>23 doesn't it?</p> <p style="text-align: right;">153</p>	<p>1 already answered.</p> <p>2 A It was talking about that incident that</p> <p>3 happened with the trolley lift station and</p> <p>4 addressing him walking off the job and not</p> <p>5 telling anybody.</p> <p>6 Q So he was cussing in the meeting and</p> <p>7 then cussing leaving the meeting?</p> <p>8 A He said I'm not going to deal with this</p> <p>9 shit and he opened the door and...</p> <p>10 Q Well, do you know why you were in the</p> <p>11 meeting at all?</p> <p>12 A Because I witnessed downtime. I didn't</p> <p>13 witness him walk off the job, but I witnessed</p> <p>14 downtime and that he was the one that was</p> <p>15 working on it. But I don't know when he left,</p> <p>16 but I did witness him and Shane working on it</p> <p>17 and I did know that we almost shut the Body Shop</p> <p>18 down because the elevator was down. There was</p> <p>19 no communication made that he had gone to lunch</p> <p>20 from my understanding.</p> <p>21 Q Did you ever hear anybody at Hyundai,</p> <p>22 other than the discussion you and Leon had, talk</p> <p>23 about Mr. Dees' Guard obligation?</p> <p style="text-align: right;">155</p>
<p>1 A Going by what was put in this right</p> <p>2 here, that's what it appears to be. But as far</p> <p>3 as me knowing anything about him being singled</p> <p>4 out, I don't know. I just know that I was in</p> <p>5 there for when Greg had called Leon into the</p> <p>6 office.</p> <p>7 Q Did Greg call Drake or Shane into the</p> <p>8 office?</p> <p>9 A Not while we were there. After Leon</p> <p>10 had came in there and had spewed out a few cuss</p> <p>11 words, my boss got up and left. He just looked</p> <p>12 at Greg and was like I'm not going to tolerate</p> <p>13 this. He goes I'm leaving.</p> <p>14 Q So you were there just as a witness?</p> <p>15 A Craig had witnessed this talking and</p> <p>16 Leon had walked out. Leon didn't -- he didn't</p> <p>17 stay there. Had he finished uttering out a few</p> <p>18 words and phrases and then he walked out.</p> <p>19 Q What words and phrases?</p> <p>20 A Well, that I was telling you, the hell,</p> <p>21 the damn, and shit and...</p> <p>22 Q Tell me what you remember he said.</p> <p>23 MR. JOHNSON: Object to the form. He's</p> <p style="text-align: right;">154</p>	<p>1 A And that probably -- I mean, we talked</p> <p>2 about him being in the Guard a couple of times,</p> <p>3 but I don't know specifically when his weekends</p> <p>4 were or when his periods were that he had to go</p> <p>5 serve. But I knew he was actively involved in</p> <p>6 it and there was times he had to do weekend duty</p> <p>7 or whatever it was.</p> <p>8 Q Do you know what Hyundai's policy is</p> <p>9 regarding weekend duty?</p> <p>10 A No, I don't. Because back when we had</p> <p>11 talked about that, there was a memorandum, I</p> <p>12 think, that was sent out by Team Relations</p> <p>13 talking about that particular issue and there</p> <p>14 was nobody in our area at the time that was</p> <p>15 actively involved in duty. So I didn't really</p> <p>16 get involved in the policy or the action or the</p> <p>17 course that's taken for that.</p> <p>18 Q You said there was a memorandum put out</p> <p>19 by HR talking about Guard duty?</p> <p>20 A Yeah, there was because there was like</p> <p>21 some other people across the plant. I don't</p> <p>22 know if it was Team Relations or HR or who it</p> <p>23 was, but there was a notice or something put out</p> <p style="text-align: right;">156</p>

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<p>1 that kind of said, hey, here's what we're going 2 to do. I can't recall exactly what it said. 3 But there were some people across the plant that 4 was also involved in the Forces. 5 Q Involved in what? 6 A Forces. Armed Forces. 7 Q And did this come out after the 8 sleeping incident that you say you saw? 9 A I can't recall. It was sometime this 10 year. I would guess it probably was. I don't 11 know. 12 Q And who was it from? 13 A It was either Team Relations or HR. 14 Q And you got a copy? 15 A No, I don't have one. 16 Q What did -- did you get a copy and just 17 throw it away? 18 A Well, we had gotten e-mails sent to 19 us -- I'm pretty sure it was in e-mail format 20 Team Relations, I think. What they had done is 21 we had to go around and check and see who's all 22 actively involved or participating in the Forces 23 or was part of the Forces. And then we didn't</p> <p style="text-align: right;">157</p>	<p>1 Q And since you didn't have any Armed 2 Forces under your immediate supervision -- 3 A I didn't get in touch with the policy 4 or get deeply involved. If we had somebody and 5 they came up to me and said they're serving in 6 the Guard or something like that, then I would 7 go to HR and Team Relations and find out what 8 it -- 9 Q Did it specifically mention Guard duty? 10 A It said -- I believe it said something 11 about serving, serving the Armed Forces or 12 serving duty or something like that. I can't 13 recall if it said National Guard or whatever. 14 Q And what did it say about -- what was 15 the company policy that was in this e-mail? 16 A I can't recall that. 17 Q Was it setting forth the protocol to 18 follow if somebody on Guard duty -- 19 A Yeah, it was basically like -- just 20 like -- like I said, it was either guidelines or 21 policy or something. Just laying it out there 22 so there's no misunderstanding that this is what 23 needs to happen or...</p> <p style="text-align: right;">159</p>
<p>1 have nobody in our area participating in it, so 2 I didn't really find a need for myself to really 3 investigate what we needed to do because we 4 didn't have anybody involved in duty. 5 Q You have a company e-mail address? 6 A Yeah. 7 Q What is it? 8 A Jamesbrookshire@hmmausa.com. 9 Q You would have gotten this through that 10 e-mail? 11 A Yeah. 12 Q And your best judgment is it was after 13 this sleeping incident? 14 A I think. I think. 15 Q And it said what? Some kind of notice? 16 MR. JOHNSON: Object to the form. 17 Q A notice about what? 18 A Just how the company policies apply or 19 the protocol that we follow for people serving 20 duty or serving in the Armed Forces. 21 Q And it was sent to you because you're 22 in a supervisory capacity? 23 A Right.</p> <p style="text-align: right;">158</p>	<p>1 Q Did it refer to the fact that there was 2 a misunderstanding? 3 A No. I think there was questions -- 4 questions brought about. Because, like I said, 5 they have people in General Assembly, people in 6 Paint Shop, I think, also that had Guard duty or 7 served in the Forces. Actually our last Team 8 Member letter that's published, we've got 9 somebody in Iraq right now, and they were 10 talking about how they missed working at the 11 plant and ready to come back and put their 12 uniform on and work back at the plant again. 13 Q Who at HR would have sent out this 14 e-mail? 15 A I don't know. Like I said, it was 16 probably either -- usually notices or 17 information like that is either HR or Team 18 Relations, one of those two. 19 Q Who would be the people? Would it be 20 Wendy Warner maybe? 21 A Wendy or Rob. 22 Q Rob Clevenger? 23 A Rob Clevenger or Wendy Warner.</p> <p style="text-align: right;">160</p>

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<p>1 Q So you think it was one of those two?</p> <p>2 A Yeah. It would have to be one of those</p> <p>3 two or their assistants, or sent out on their</p> <p>4 behalf.</p> <p>5 Q And was it a mass e-mail to everybody?</p> <p>6 A Typically for information purposes,</p> <p>7 they usually send it to -- they've usually got</p> <p>8 -- the acronym they use is HMMA all and it goes</p> <p>9 out to everybody on the e-mail system.</p> <p>10 Q Did it ever refer to whether or not</p> <p>11 military orders would be required for Reserve</p> <p>12 duty?</p> <p>13 A I can't recall that.</p> <p>14 MR. KILBORN: I want to take a break.</p> <p>15</p> <p>16 (Whereupon, a brief recess was had in</p> <p>17 the proceeding.)</p> <p>18</p> <p>19 BY MR. KILBORN:</p> <p>20 Q Okay. Was your wife at this party</p> <p>21 where you were snorting that cocaine?</p> <p>22 A She wasn't. She was only there for a</p> <p>23 couple of hours.</p> <p style="text-align: right;">161</p>	<p>1 their computers, but I don't know if it's like</p> <p>2 for interconference calls or whatever at their</p> <p>3 desk.</p> <p>4 Q So HMC headquarters in Seoul; right?</p> <p>5 A Yeah.</p> <p>6 Q They were monitoring the --</p> <p>7 A Press repair.</p> <p>8 Q -- press repair from Seoul?</p> <p>9 A I think so. They've got some</p> <p>10 organization they've got called Global Command</p> <p>11 Center or something like that where they monitor</p> <p>12 all the KPIs, key performance indexes, for all</p> <p>13 the plants and any major catastrophic problems</p> <p>14 or anything. Our press was down for about a</p> <p>15 month, and that's big downtime, big concern.</p> <p>16 Q Did you get any orientation when you</p> <p>17 began work at Hyundai or had some since then</p> <p>18 about the company organization relationship</p> <p>19 between Hyundai Motor Corporation, AMC, HMMA, or</p> <p>20 HMA?</p> <p>21 A Any meetings?</p> <p>22 Q Yeah. Any orientation where the</p> <p>23 relationship was discussed.</p> <p style="text-align: right;">163</p>
<p>1 Q But she was there?</p> <p>2 A Yeah, she was there in the earlier part</p> <p>3 of the...</p> <p>4 Q When did she learn that you snorted</p> <p>5 cocaine and ended up being found out at the</p> <p>6 Hyundai plant?</p> <p>7 A I told her when -- that day when I</p> <p>8 tested positive and when I went through all</p> <p>9 that.</p> <p>10 Q She didn't know before then?</p> <p>11 A No. She knew I had -- in my younger</p> <p>12 years I had done it a couple of times.</p> <p>13 Q Are there any cameras in that Stamping</p> <p>14 Plant?</p> <p>15 A There's some, I believe, externally on</p> <p>16 the outsides of the building to kind of view</p> <p>17 what's going on outside in some of the parking</p> <p>18 lots. They had had some set up inside the plant</p> <p>19 just recently when we broke the press, and HMC</p> <p>20 was monitoring the press repair from</p> <p>21 headquarters. But that was -- as far as any</p> <p>22 other ones internally, I don't know of any. I</p> <p>23 know some of the Koreans have the web cams on</p> <p style="text-align: right;">162</p>	<p>1 A They had put us through what they --</p> <p>2 well, not all of us. But what they've been</p> <p>3 trying to do is put everybody through what they</p> <p>4 call cultural training, HMC culture training.</p> <p>5 And they'll take, Team Members, management</p> <p>6 members, and all that. They had sent me last</p> <p>7 year right before my wife -- about two weeks</p> <p>8 before she was due to have the baby -- sent me</p> <p>9 to Korea for a week. But they picked Team</p> <p>10 Members, management members and sent them</p> <p>11 together as a group over to Korea. And they've</p> <p>12 been doing that off and on for a couple of</p> <p>13 years, just to kind of learn their culture and</p> <p>14 learn their ways and stuff.</p> <p>15 Q They took you out of your drug abuse</p> <p>16 program?</p> <p>17 A No, no. This was last year.</p> <p>18 Q 2006?</p> <p>19 A 2006, yes, sir.</p> <p>20 Q Did they tell you that this is just one</p> <p>21 big company really --</p> <p>22 MR. JOHNSON: Object to the form.</p> <p>23 Q -- run by Seoul HMC?</p> <p style="text-align: right;">164</p>

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<p>1 A Their philosophy is it's a company 2 working together in harmony to build the 3 quality -- highest quality automobiles for 4 people in the world.</p> <p>5 Q Right. Well, what I'm hearing is that 6 HMC controls everything; is that true?</p> <p>7 MR. JOHNSON: Object to the form.</p> <p>8 A No, they don't control everything, but 9 I mean, it's -- my opinion, if I was starting -- 10 just like Toyota or Honda when they first 11 started their first plant in a new country, 12 they're going to have active involvement on how 13 the company is structured, how it's ran to make 14 sure the business is going to prosper, because 15 they had a company they tried running in Canada 16 and had some problems there and it ended up not 17 making it. So I think they know that they need 18 to take an active foothold in making sure the 19 company is going to be prosperous and move in 20 the right direction or otherwise they're going 21 to lose a lot of money.</p> <p>22 Q And who is they?</p> <p>23 A HMC and HMA. It's in their best</p> <p style="text-align: right;">165</p>	<p>1 they're working through. I wouldn't say HMC is 2 controlling everybody and telling them what to 3 do.</p> <p>4 Q How about HMA?</p> <p>5 A They don't have much of an influence on 6 us. I mean, that's our sales group. That's our 7 sales group, and they kind of -- really the only 8 involvement they have with us as far as giving 9 us an understanding of our production schedule 10 and our orders and how much overtime we need to 11 work to fulfill those orders.</p> <p>12 Q HMA does that?</p> <p>13 A Yeah, they give you a sales forecast.</p> <p>14 Q So you run production to meet the sales 15 forecast HMA puts out?</p> <p>16 A Yeah.</p> <p>17 Q Is that in written form?</p> <p>18 A I'm not involved with that. That's 19 something that's done with Production Control. 20 Production Control figures out what all the 21 other departments need to do and the suppliers 22 and they kind of disseminate the information and 23 give it to us.</p> <p style="text-align: right;">167</p>
<p>1 interest to make sure the company is moving in 2 the right direction. They've already -- just 3 our plant alone they've already reduced the 4 Korean head count activity in our Stamping 5 Department because we used to have like 15 6 Koreans in our department. Now we only have 7 probably six.</p> <p>8 Q You started in 2005?</p> <p>9 A Yes, sir, August.</p> <p>10 Q So the HMC and HMA desired and actually 11 had active control to make sure that the 12 operations got up and running correctly?</p> <p>13 A (Witness nods head.) And still it's 14 still a young plant. We're still working bugs 15 out now, but it's progressed a lot from what it 16 was a couple of years ago.</p> <p>17 Q Was that a yes to my last question? 18 You nodded your head.</p> <p>19 A Yes. Sorry.</p> <p>20 Q And is that active control by HMC and 21 HMA still present?</p> <p>22 MR. JOHNSON: Object to the form.</p> <p>23 A There's a joint partnership that</p> <p style="text-align: right;">166</p>	<p>1 Q Is HMA -- do they have people on the 2 scene at the Hyundai plant?</p> <p>3 A We used to have a guy, Mr. Duckworth, 4 but he went back to HMA out in California. He 5 was our major presence for HMA. My 6 understanding is we have people that come in off 7 and on into our plant, but as far as having 8 direct people from HMA at our plant, I don't 9 know of any and where they're at.</p> <p>10 Q Outside of the sleeping incident, do 11 you know of any employment problems that's 12 Mr. Dees had at Hyundai?</p> <p>13 A The only other issue I know about 14 besides the issue with the elevator system that 15 was in the e-mail, the sleeping problem, Greg 16 had mentioned to me a couple of times he had 17 some issues with Leon kind of being defiant on 18 doing some work. And that's about it.</p> <p>19 Q Tell me what you remember there.</p> <p>20 A Just him thinking that he doesn't need 21 to go clean up messes or clean up after 22 himself. We've got areas that we agreed to -- 23 between Production and Maintenance we agreed to</p> <p style="text-align: right;">168</p>

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<p>1 clean up in the plant. And we -- Production is 2 responsible for the baler area. We clean up the 3 baler area and Maintenance is responsible for 4 cleaning up the press pits. And a lot of those 5 Maintenance guys -- I know Greg had mentioned 6 Leon, he didn't like to go down there and do his 7 share of cleaning up the press pit. He had 8 problems with that before.</p> <p>9 Q And the press pit is on the basement 10 level underneath the two giant presses?</p> <p>11 A Yes, sir.</p> <p>12 Q And that's where the shards and pieces 13 left over from the Stamping process come down 14 the shoot, hit the conveyor belt, and go off to 15 the baling area?</p> <p>16 A They have what they call the scrap 17 metal slugs -- they call them slugs, punch 18 pieces. Oil drips out of the press from leaks 19 and stuff like that.</p> <p>20 Q And have you been down in the pit when 21 it's operating?</p> <p>22 A Yeah, I've been down there.</p> <p>23 Q Describe that for me.</p> <p style="text-align: right;">169</p>	<p>1 just besides the little round slugs, aren't 2 there?</p> <p>3 A Basically what makes it out to the 4 floor is slugs. That's basically what -- 5 because they're small and they fall out from the 6 sides of the conveyor. Most of the scrap metal 7 comes down the shoots which are enclosed shoots 8 and hit the conveyor.</p> <p>9 Q And Mr. Dees didn't like to be in the 10 pit?</p> <p>11 MR. JOHNSON: Object to the form.</p> <p>12 A Me asking him personally or knowing him 13 personally, I can't vouch for that, but I know 14 Greg had told me he had some issues with Leon 15 going down there and doing his job in the pit. 16 They had like a rotation set up where guys took 17 turns going down to the pit and cleaning the 18 pit. I know from what I understand he had some 19 problems with Leon going down there and doing 20 his.</p> <p>21 Q Mr. Dees didn't like the pit, did he?</p> <p>22 MR. JOHNSON: Object to the form.</p> <p>23 A I don't know.</p> <p style="text-align: right;">171</p>
<p>1 A Just, you mean, like the environment or 2 the sound or everything there?</p> <p>3 Q Everything.</p> <p>4 A The press pit you definitely have to 5 wear hearing protection. There's oil spots in 6 certain places like where it's dripping down 7 from either the blank washer, the press 8 hydraulic units, or what have you. And then the 9 scrap comes down the shoots and it's pretty 10 noisy coming down the shoots and hits the 11 conveyor and rolls out on the conveyor. 12 Sometimes those little slugs bounce out of the 13 sides of the conveyor. But you can't -- if you 14 get anywhere near the conveyor, they've got what 15 they call an E stop switch that you pull if 16 anything emergency happens and it shuts 17 everything off, shuts the press off, conveyor 18 off and everything there.</p> <p>19 Q There's a lot more than slugs that 20 comes out of there, isn't there? Isn't there 21 giant metal shards?</p> <p>22 MR. JOHNSON: Object to the form.</p> <p>23 Q And all kinds of sharp pieces of metal</p> <p style="text-align: right;">170</p>	<p>1 Q Did anybody like the pit?</p> <p>2 A I don't what they -- I've been down 3 there cleaning scrap up and oil up myself just 4 to show people I'll get in there and work with 5 them just to say, hey, it's not that bad of a 6 job.</p> <p>7 Q How many decibels is the noise in the 8 pit when the two presses are running?</p> <p>9 A I couldn't vouch for that, but I know 10 at the back of the presses it's 90, 95. 90 to 11 95 decibels.</p> <p>12 Q What is the level at which permanent 13 hearing loss is a danger?</p> <p>14 MR. JOHNSON: Object to the form.</p> <p>15 A Over 85 decibels over an extended 16 eight-hour period you experience hearing loss.</p> <p>17 Q And this is about 90?</p> <p>18 A If you stand right there at the back of 19 the press consistently. That's right back there 20 where the opening is at the back of the press. 21 Currently right now we're purchasing sound 22 deadening material because we're trying to make 23 an effort -- consorted effort with Safety to</p> <p style="text-align: right;">172</p>

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<p>1 reduce the decibels so people don't have to wear 2 hearing protection in the area anymore.</p> <p>3 Q And are Kevlar sleeves mandatory in the 4 pit?</p> <p>5 A Yes.</p> <p>6 Q Is hard hat mandatory in the pit?</p> <p>7 A Yes.</p> <p>8 Q Safety goggles mandatory in the pit?</p> <p>9 A Yes.</p> <p>10 Q Steel-toe shoes mandatory in the pit?</p> <p>11 A Yes.</p> <p>12 Q Any other safety gear mandatory?</p> <p>13 A If you're going to be picking up like 14 the metal scrap you were talking about, you've 15 got to wear gloves.</p> <p>16 Q Kevlar gloves?</p> <p>17 A Yes.</p> <p>18 Q Was one of Leon's jobs in the pit 19 picking up the metal shards?</p> <p>20 A Yeah.</p> <p>21 Q Anybody ever get cut doing that?</p> <p>22 A Usually if you're wearing your PPE most 23 of the time you won't get cut unless you're</p> <p style="text-align: right;">173</p>	<p>1 Q What you were doing it was dangerous 2 because it went right through your Kevlar glove; 3 isn't that true?</p> <p>4 MR. JOHNSON: Object to the form.</p> <p>5 A There's ways you can handle the metal 6 that will reduce the danger of the job. And 7 that's -- that was just -- me personally I was 8 in a hurry trying to get the press running. I 9 was yanking it out. You can take the shards or 10 scrap pieces and you can bend them into pieces 11 and get poles and yank them out with poles and 12 stuff.</p> <p>13 Q Well, see if you can answer this 14 question. Isn't it true that the pit is a 15 dangerous, noisy, oily place to work?</p> <p>16 MR. JOHNSON: Object to the form.</p> <p>17 A It's -- I mean, it's got noise because 18 of the presses running. It's going to be noisy 19 anywhere there are presses. 5400 tons, that 20 kind of pressure is going to generate noise. As 21 far as the oil, just like a car that ages, with 22 time you're going to have some oil leaks. It's 23 Maintenance's responsibility to fix those leaks</p> <p style="text-align: right;">175</p>
<p>1 really tugging on a sharp piece of metal and 2 they'll kind of cut through the glove. But as 3 far as I know, I haven't heard anybody that's 4 been wearing their PPE got hurt like that.</p> <p>5 Q And you got cut because of why?</p> <p>6 A I was doing exactly what I just told 7 you. I was -- we had a piece of scrap stuck 8 down in the scrap shoot from above. When the 9 die cuts off the trim edge, it goes into the 10 scrap shoot which goes to the pit. Sometimes 11 those will get backed up or a panel will fall 12 off inside the scrap shoot and then the scrap 13 will back up. Then we have to pull all that 14 scrap out by hand. And there was a piece stuck 15 in there and I yanked on it and it just -- it 16 will go right through the glove.</p> <p>17 Q And it went right through your glove?</p> <p>18 A Yeah.</p> <p>19 Q That's a Kevlar glove?</p> <p>20 A Yeah.</p> <p>21 Q So it's dangerous, isn't it?</p> <p>22 MR. JOHNSON: Object to the form.</p> <p>23 A Depends on what you're doing.</p> <p style="text-align: right;">174</p>	<p>1 as they come about.</p> <p>2 Q So it's not oily?</p> <p>3 A I wouldn't call it excessive oily.</p> <p>4 Q But it's oily?</p> <p>5 A Yeah, there's oil down there.</p> <p>6 Q Oil is slippery, isn't it?</p> <p>7 A Yes.</p> <p>8 Q Even in steel-toe shoes it's slippery?</p> <p>9 MR. JOHNSON: Object to the form.</p> <p>10 A It can be if you've got puddles of it 11 everywhere, yeah. Of course it can be 12 slippery. I mean, that's also part of us buying 13 our industrial boots.</p> <p>14 Q Did you ever see anybody taking 15 photographs of the control panel area where you 16 claim Mr. Dees was sleeping?</p> <p>17 A Have I seen anybody taking pictures?</p> <p>18 Q Right.</p> <p>19 A Huh-uh.</p> <p>20 Q Have you ever seen any photographs of 21 that area?</p> <p>22 A No.</p> <p>23 Q Is that area the same today as it was</p> <p style="text-align: right;">176</p>

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<p>1 when you say you saw Mr. Dees sleeping?</p> <p>2 A I'm trying to think. The only</p> <p>3 different thing that's up there right now from</p> <p>4 that picture, there's an orange ladder that's</p> <p>5 laying up there, been laying up there. I mean,</p> <p>6 there's no chair up there. And somebody drew</p> <p>7 that wire spool. I don't remember that wire</p> <p>8 spool. There's nothing out in front of that</p> <p>9 cabinet right now.</p> <p>10 MR. KILBORN: Thank you,</p> <p>11 Mr. Brookshire. That's all I have.</p> <p>12 EXAMINATION</p> <p>13 BY MR. JOHNSON:</p> <p>14 Q Mr. Brookshire, I've got a couple of</p> <p>15 follow-up questions. Some I just want to make</p> <p>16 sure I'm clear on a couple of things.</p> <p>17 The incident where you injured your</p> <p>18 hand was that actually done in the pit or was</p> <p>19 that up on the Production level at the</p> <p>20 Stamping --</p> <p>21 A It was on the Production level.</p> <p>22 Q So that wasn't actually in the pit?</p> <p>23 A No, sir.</p> <p style="text-align: right;">177</p>	<p>1 serious misconduct?</p> <p>2 A Yes, sir.</p> <p>3 Q Okay. And Mr. Kilborn asked you to</p> <p>4 circle some bullet points, and one of the ones</p> <p>5 that you circled was -- I guess it's the fifth</p> <p>6 bullet point -- use, possession, sale, transfer</p> <p>7 of, or being under the influence of illegal</p> <p>8 drugs, alcohol, or any other intoxicating</p> <p>9 substance at any time on HMMA property; correct?</p> <p>10 A Yeah.</p> <p>11 Q Now, just to go back and clarify. Did</p> <p>12 you ever use illegal drugs, alcohol, or any</p> <p>13 other intoxicating substance on HMMA property?</p> <p>14 A No, sir.</p> <p>15 Q Did you ever possess any illegal drugs,</p> <p>16 alcohol, or intoxicating substances on HMMA</p> <p>17 property?</p> <p>18 A No, sir.</p> <p>19 Q Did you ever sell any illegal drugs,</p> <p>20 alcohol, or other intoxicating substances on</p> <p>21 HMMA property?</p> <p>22 A No, sir.</p> <p>23 Q Okay. Did you ever transfer or give or</p> <p style="text-align: right;">179</p>
<p>1 Q Mr. Brookshire, you reviewed</p> <p>2 Plaintiff's Exhibit Number 15 with Mr. Kilborn;</p> <p>3 correct?</p> <p>4 A Yes, sir.</p> <p>5 Q And just to make sure, when Mr. Kilborn</p> <p>6 asked you to review the list, I think you looked</p> <p>7 at some of the bullet points there; correct?</p> <p>8 A Yes, sir.</p> <p>9 Q And did you also review or read into</p> <p>10 the Record what follows those bullet points?</p> <p>11 A The bullet points that I circled, I</p> <p>12 read most of the bullet point. I mean, I didn't</p> <p>13 finish that one or that one towards the end.</p> <p>14 Q Did you read the final sentence there</p> <p>15 that says the aforementioned list is not all</p> <p>16 inclusive?</p> <p>17 A No, I didn't. I didn't see that.</p> <p>18 Q You did not see that?</p> <p>19 A No.</p> <p>20 Q You understand what that means?</p> <p>21 A Right. There could be other issues</p> <p>22 that aren't included on this list.</p> <p>23 Q Other things that may constitute</p> <p style="text-align: right;">178</p>	<p>1 receive any illegal drugs, alcohol, or other</p> <p>2 intoxicating substances at any time on HMMA</p> <p>3 property?</p> <p>4 A No, sir.</p> <p>5 Q Were you ever under the influence of</p> <p>6 illegal drugs, alcohol, or other intoxicating</p> <p>7 substances at any time on HMMA property?</p> <p>8 A I wasn't under the influence, but I</p> <p>9 know that I tested positive.</p> <p>10 Q And what do you mean by you know you</p> <p>11 weren't under the influence?</p> <p>12 A As in the immediate debilitating</p> <p>13 effects of drugs or alcohol.</p> <p>14 Q You often hear the term impairment.</p> <p>15 Were you impaired at any time because of illegal</p> <p>16 drugs, alcohol, or other intoxicating substances</p> <p>17 on HMMA property?</p> <p>18 A No.</p> <p>19 MR. KILBORN: I'm going to object to</p> <p>20 that as to him being an expert on what's</p> <p>21 impaired.</p> <p>22 Q Okay. Have you ever used any illegal</p> <p>23 drugs, alcohol, or any other intoxicating</p> <p style="text-align: right;">180</p>

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<p>1 substances immediately prior to coming to work?</p> <p>2 A No, sir.</p> <p>3 Q Had you ever felt drunk at work?</p> <p>4 A No. Tired, not drunk.</p> <p>5 Q Mr. Kilborn had asked you about a wire</p> <p>6 spool that was on a drawing that somebody had</p> <p>7 made. Is it your testimony that you recall that</p> <p>8 there was no wire spool there at the time you</p> <p>9 saw Mr. Dees sleeping, or is it that you don't</p> <p>10 remember whether it was there or not?</p> <p>11 MR. KILBORN: I object to counsel</p> <p>12 leading his own witness.</p> <p>13 A I don't remember it being there.</p> <p>14 Q Okay. You had mentioned to Mr. Kilborn</p> <p>15 this Mr. Mun had come and spoken to you at some</p> <p>16 point. Do you recall whether he received a</p> <p>17 telephone call from Mr. Dees' wife?</p> <p>18 A Yes, he did.</p> <p>19 Q Do you remember what he said about the</p> <p>20 call from Dees' wife?</p> <p>21 A I think something to the effect that</p> <p>22 his wife didn't feel that it was right for what</p> <p>23 happened and he should not be getting any kind</p> <p style="text-align: right;">181</p>	<p>1 didn't you?</p> <p>2 A I didn't have anything -- I didn't</p> <p>3 possess anything.</p> <p>4 Q You knew about that, didn't you?</p> <p>5 MR. JOHNSON: Object to the form.</p> <p>6 A (No response.)</p> <p>7 Q You didn't know that was possible?</p> <p>8 A I don't have this whole book memorized.</p> <p>9 Q Let's see if you've got the rest of it</p> <p>10 memorized. HMMA also considers off-the-job</p> <p>11 illegal drug use as proper cause for</p> <p>12 disciplinary action up to and including</p> <p>13 termination of employment. You read that?</p> <p>14 A Yeah.</p> <p>15 Q And you are guilty of off-the-job</p> <p>16 illegal drug use, aren't you?</p> <p>17 MR. JOHNSON: Object to the form.</p> <p>18 A I showed up positive in a urine screen.</p> <p>19 Q That's not my question. You are guilty</p> <p>20 of off-the-job illegal drug use, aren't you?</p> <p>21 A Going by a urine specimen, yes, I am.</p> <p>22 Q Well, going by what you know you did,</p> <p>23 which is snort cocaine --</p> <p style="text-align: right;">183</p>
<p>1 of discipline for doing that on the job, that he</p> <p>2 didn't do anything wrong.</p> <p>3 MR. JOHNSON: I think I'm about done if</p> <p>4 we could take a quick break so I could talk to</p> <p>5 Chris.</p> <p>6</p> <p>7 (Whereupon, a brief recess was had in</p> <p>8 the proceeding.)</p> <p>9</p> <p>10 MR. JOHNSON: I'm done.</p> <p>11 FURTHER EXAMINATION</p> <p>12 BY MR. KILBORN:</p> <p>13 Q Mr. Brookshire, would you look at</p> <p>14 Plaintiff's Exhibit 15, the handbook? And if</p> <p>15 you'll look on page 38 and 39, it's got specific</p> <p>16 handbook rules on drug and alcohol, doesn't it?</p> <p>17 A Yeah. I haven't -- like I said, I</p> <p>18 haven't reviewed everything, but...</p> <p>19 Q Well, let me help you. Look at the top</p> <p>20 of page 39. The third line down says any</p> <p>21 illegal substance will be turned over to the</p> <p>22 appropriate law enforcement agency and criminal</p> <p>23 prosecution may result. You knew about that,</p> <p style="text-align: right;">182</p>	<p>1 MR. JOHNSON: Object to the form.</p> <p>2 Q -- you violated this policy, didn't</p> <p>3 you?</p> <p>4 A Yeah.</p> <p>5 Q And isn't it true that you have shown</p> <p>6 up at work at Hyundai with alcohol on your</p> <p>7 breath?</p> <p>8 MR. JOHNSON: Object to the form.</p> <p>9 A No, I haven't.</p> <p>10 Q You have not. All right. And you say</p> <p>11 in response to your lawyer's questions that you</p> <p>12 had, I think, gotten over the debilitating</p> <p>13 effects of alcohol and cocaine by the time you</p> <p>14 had showed up at work; is that true?</p> <p>15 A What's that?</p> <p>16 Q You told your lawyer you had gotten</p> <p>17 over the debilitating effects of alcohol and</p> <p>18 cocaine by the time you went to work?</p> <p>19 A That would be correct.</p> <p>20 Q When did you get over the debilitating</p> <p>21 effects of both the alcohol and the cocaine?</p> <p>22 MR. JOHNSON: Object to the form.</p> <p>23 A I don't know the mathematical</p> <p style="text-align: right;">184</p>

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<p>1 calculations off the top of my head.</p> <p>2 Q What's your best judgment?</p> <p>3 A Alcohol is out of your body within 24</p> <p>4 hours.</p> <p>5 Q Well, I'm not talking about anybody's</p> <p>6 body. When did you, Jim Brookshire, get over</p> <p>7 the effects of cocaine and alcohol that you had</p> <p>8 consumed at that party at this gentleman's</p> <p>9 house?</p> <p>10 A The incident had happened on Saturday,</p> <p>11 and I was over the debilitating effects by</p> <p>12 Sunday.</p> <p>13 Q What time Sunday?</p> <p>14 A I don't know. I was fine, out mowing</p> <p>15 the yard by lunchtime Sunday.</p> <p>16 Q So you didn't even have a hangover;</p> <p>17 right?</p> <p>18 A (Witness shakes head.)</p> <p>19 Q No?</p> <p>20 A No. Tired. Tired and thirsty.</p> <p>21 Q Did the cocaine make you thirsty or the</p> <p>22 alcohol?</p> <p>23 A Alcohol.</p> <p style="text-align: right;">185</p>	<p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 STATE OF ALABAMA)</p> <p>4</p> <p>5 COUNTY OF AUTAUGA)</p> <p>6</p> <p>7</p> <p>8 I hereby certify that the above and</p> <p>9 foregoing deposition was taken down by me in</p> <p>10 stenotype, and the questions and answers thereto</p> <p>11 were transcribed by means of computer-aided</p> <p>12 transcription, and that the foregoing represents</p> <p>13 a true and accurate transcript of the testimony</p> <p>14 given by said witness upon said hearing.</p> <p>15 I further certify that I am neither of</p> <p>16 counsel, nor kin to the parties to the action,</p> <p>17 nor am I in anywise interested in the result of</p> <p>18 said cause.</p> <p>19</p> <p>20</p> <p>21 -----</p> <p>21 STACEY L. JOHNSON, Commissioner</p> <p>22 Certified Court Reporter,</p> <p>22 ACCR#: 386 - Expires 09-30-08</p> <p>23 Commission Expires 06-22-2011</p> <p style="text-align: right;">187</p>
<p>1 MR. KILBORN: That's all my questions.</p> <p>2 Thank you.</p> <p>3 FURTHER EXAMINATION</p> <p>4 BY MR. JOHNSON:</p> <p>5 Q Just to follow up with you,</p> <p>6 Mr. Brookshire. Mr. Kilborn referenced on page</p> <p>7 39 of the Team Member Handbook, which was been</p> <p>8 marked as Plaintiff's Exhibit 15, the last</p> <p>9 sentence in the first partial paragraph on page</p> <p>10 39 it says HMA also considers off-the-job</p> <p>11 illegal drug use as proper cause for</p> <p>12 disciplinary action up to and including</p> <p>13 termination from employment. Was the</p> <p>14 conditional offer of employment to your</p> <p>15 knowledge some form of disciplinary action?</p> <p>16 MR. KILBORN: Object. Leading.</p> <p>17 A Most definitely.</p> <p>18 MR. JOHNSON: That's all I have.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 FURTHER DEPONENT SAITH NOT</p> <p style="text-align: right;">186</p>	

Interview with Jim Brookshire

On Feb 14 at approx. 1:00 A.M. Jim went upstairs to check on some quality issues in the SOP (Side Outer)

Jim went up to the 3rd floor where he noticed Leon Deen sitting at operating station. Leon was positioned with his head down and his back was towards the cabinet.

Jim observed Leon sitting in this position for approx. 2 minutes.

At this time Jim turned up his radio and let it chirp about 4 times before Leon responded.

Whenever Leon woke up he grabbed a pole and began to act like he was pulling trolleys.

Jim went around to check some panels and when he approached the area again he noticed Leon sitting in the same chair; however, this time he was alert. Not long after this Jim witnessed Leon walking down the stairs.

About 30 minutes passed by before Jim talked to Mr. Kevin Hughes. During this time Kevin did not know where Leon was.

PLAINTIFF'S
EXHIBIT

J-A PL-2-15-07

DEES V HMMA 00037-DOCS PRODUCED

Jim was approximately 25 feet away from Leon when he noticed that he was asleep.

Jim walked towards Leon and began chirping his radio at a distance approx 13 feet.

Due to Leon's hat being on his head Jim did not see his eyes closed; however he (Jim stated that his head was facing towards the floor, with his chin tucked to his chest)

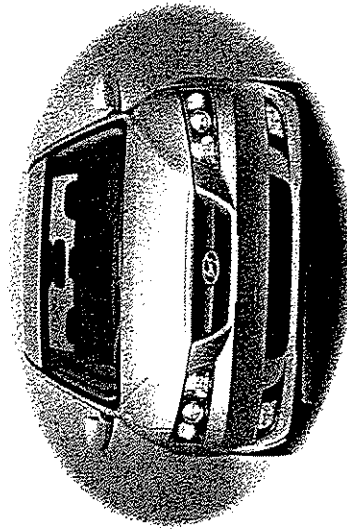
Q- A BQ
2-19-07

(FILED UNDER SEAL)

Plaintiff's Exhibit 14 to James Brookshire's Deposition

(James Brookshire's Personnel File)

Team Member Handbook



PLAINTIFF'S
EXHIBIT

15



Hyundai Motor Manufacturing Alabama, LLC.

DEES000009

1st Edition

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HMMMA HISTORY

Hyundai Motor Company (HMC) was established in 1967. By 1974, HMC produced the Pony as their first independently designed and manufactured model.

In 1985 HMC established Hyundai Motor America (HMA) and launched the Excel which was the best selling import sub-compact in the US for three years. Eight years later Hyundai launched the Sonata II and started assembly of the Excel in Thailand.

Over the last 35 years Hyundai has established its place in a global marketplace. On April 2, 2002, Hyundai announced it had chosen Montgomery, Alabama to build its first U. S. manufacturing facility which will produce the next generation Sonata and Santa Fe.

HMMMA's VISION STATEMENT

Our Team provides value for your future

HMMMA's MISSION STATEMENT

To create exceptional automotive value for our customers by harmoniously blending safety, quality, and efficiency. With our diverse team, we will provide responsible stewardship to our community and environment while achieving stability and security now and for future generations.

HMMMA's TEAM VALUES

SAFETY: HMMMA is committed to providing a safe working environment to preserve and enhance the health and personal safety of our Team Members. We will achieve this through the implementation of safety policies, safe work practices, a drug free workplace, and by daily commitment of all Team Members.

QUALITY: HMMMA's commitment to Quality begins with its ability to achieve continuous improvement in its product by always listening to our customers. HMMMA works with its suppliers to ensure high standards are continually maintained. All HMMMA Team Members have an active role in maintaining and improving both the manufacturing process and quality.

TEAM DIVERSITY: HMMMA's success depends on treating each Team Member with dignity and respect and utilizing our Team's diversity to its maximum potential. HMMMA's definition of Team Diversity is accepting our differences and learning from each Team Member's unique perspective in order to achieve a new standard of excellence in society, at home and at work. We must all work as a Team, practicing integrity as we deal with our customers while listening and learning from one another, sharing in our successes, and helping one another succeed.

EFFICIENCY: In order to provide job stability and maintain profitability to HMMMA we must all act effectively to minimize all aspects of waste.

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To achieve continuous growth and innovation, each Team Member has the responsibility to find more efficient ways to produce our products for our internal and external customers.

STEWARDSHIP: At HMMA we are committed to the stewardship of our environment and our community. Stewardship simply means managing responsibly. We are committed to conserving energy, recycling, and eliminating elements that could cause harm to the environment. HMMA is also committed to being actively involved in our community in order that it may grow for the benefit of our Team Members and their families.

EQUAL EMPLOYMENT OPPORTUNITY

HMMA is committed to providing an environment that is free of unlawful discrimination and providing equal employment opportunities and promotional opportunities to all Team Members.

Equal employment opportunity means eliminating any practice of unlawful discrimination from employment - in recruitment, application, qualification, hiring, training and education, promotions, corrective action, layoffs, terminations, and all other conditions of employment.

HMMA makes all decisions with regard to employment without discriminating on the basis of race, color, religion, national origin, age, sex, disability, veteran status or any other unlawful basis. Additionally, HMMA will make reasonable accommodations for qualified job applicants and Team Members with disabilities, in accordance with the Americans with Disabilities Act.

HMMA's team relations manager has the appropriate authority and the responsibility to administer the EEO programs with regard to employment and promotional opportunities. Any Team Member who feels he/she has been discriminated against may express such concerns to his/her group leader/manager, the team relations representative, and/or the Human Resources Director. HMMA's team relations manager will be responsible for administering HMMA's EEO policy and insuring that any reported EEO violations are investigated promptly and handled according to all federal and state laws as well as HMMA's policies and procedures.

UNLAWFUL HARASSMENT

In order for all HMMA Team Members to enjoy a work environment free from all forms of unlawful discrimination, including sexual harassment, no Team Member - male or female - should be subject to unsolicited and unwelcome sexual advances or conduct, whether verbal, physical, explicit, or implied. This includes verbal innuendoes, suggestive comments, off-color jokes, gestures or physical contact. Such embarrassing, demeaning or intimidating behaviors interfere with a Team Member's work performance and may create a hostile, offensive work environment. It is also unlawful sexual harassment when submission to sexual

advances is a condition of getting or keeping one's job or when it influences personnel decisions. Furthermore, it is contrary to HMMA policy for any Team Member to be subjected to harassment in the workplace because of race, color, religion, national origin, age, physical or mental disability, veteran's status, or any other unlawful basis. Cases of such unlawful harassment should be reported to your group leader/manager, team relations representative, or the team relations manager.

HMMA's POSITION ON UNIONS

HMMA's team concept and creating a team environment is based on faith in each Team Member and recognizes our commitment to ensure a positive working environment. HMMA has developed its policies, wage structure and benefits plans with our Team Members' best interests in mind. Additionally, HMMA is committed to providing all Team Members with a safe place to work by utilizing state of the art equipment, technologies, as well as work practices to ensure safety.

By joining together as a team, we can accomplish our mutual goals assuring the success of Hyundai Motor Manufacturing Alabama, LLC and providing greater opportunities and job security for all Team Members and their families. Because of HMMA's commitment to every Team Member we do not believe that a third party such as a union is necessary at HMMA.

PURPOSE OF THE HANDBOOK

HMMA's handbook is intended as a summary of HMMA's policies and procedures. We ask each Team Member to read the handbook and familiarize themselves with HMMA's policies and procedures in order for you to understand HMMA's responsibilities to you and your responsibilities to HMMA.

This handbook is not a contract. We ask each Team Member to understand that in order for HMMA to remain competitive in a global market there may be times when changes are necessary. HMMA reserves the right to change policies and procedures when it becomes necessary, either in whole or in part, with or without notice. When it is determined that a policy or procedure needs to be changed, all Team Members will be notified by their manager and/or a video or other printed material to communicate such changes.

If Team Members have any questions concerning these policies and procedures they should ask their group leader/manager. If the Team Member is still unclear about the policies and procedures they should contact their team relations representative for clarification.

EMPLOYMENT STATEMENT

Every Team Member's employment with HMMA is a voluntary one and is subject to termination by you or HMMA at will, with or without cause, and with or without notice, at any time. Nothing in this

handbook or HMMA policies or procedures shall be interpreted to be in conflict with or to eliminate or modify in any way the employment-at-will status of HMMA Team Members.

This policy of employment-at-will may not be modified by any officer or Team Member and shall not be modified in any publication or document. The only exception to this policy is a written employment agreement approved at the discretion of the president or the board of directors, whichever is applicable.

This handbook or any policies or procedures are not contracts of employment.

TEAM MEMBER RECORDS

Team Member records will be kept for information and business purposes only. Any of the following changes to your status must be reported to Human Resources:

- Name, address, or telephone number
- Marital Status
- Birth date, total number of dependents, their relationship to you
- Citizenship status
- Benefit - plan beneficiary designation
- Person(s) to be notified in case of emergency
- Formal education, courses completed, other training or professional skills acquired

Upon request, you may examine your own personnel file and indicate to Human Resources any information you think is inaccurate. Any Team Member wishing to view his/her personnel file must make a written request specifically stating what he/she wants to review and why they want to review the record on file. All personnel files are confidential information and can only be accessed by HMMA Team Members who have authorization. All personnel folders are located in Human Resources.

PROBATION PERIOD

The probationary period is 90 calendar days. This probationary period is a time for evaluation, both by you and by HMMA. The probationary Team Member needs to evaluate HMMA's policies, procedures and overall working environment. The automotive industry is highly competitive. The work is fast-paced, physically demanding, high volume production which demands high standards of quality and safety. Learning to meet performance standards, working in a fast-paced manufacturing environment while meeting the guidelines which govern our conduct, and becoming acquainted with our team approach are also a part of the evaluation new Team Members need to make of HMMA.

HMMA needs to evaluate your progress during this period as well. Three performance evaluations are conducted during the probationary period.

These evaluations occur at the following intervals:

- 1 30 days
- 2 60 days
- 3 85 days

If any new Team Member is off due to an approved leave of absence, the number of days absent will be added to the probation period.

Your overall progress is evaluated during the probation period. Strengths and weaknesses are discussed and helpful feedback regarding your development and progress is given during each of the aforementioned reviews.

In the event progress is less than acceptable or violations of standards of conduct occur, a probationary Team Member's employment may be terminated prior to the end of the 90 day period.

Before any new Team Member is terminated, a review of the facts and approvals by the department manager, team relations manager, director of human resources are required.

Once the probationary period is completed, the new Team Member becomes eligible for the following programs:

Equal Treatment Procedure
Peer Review Panel
Corrective Action Program
Attendance Incentive

LENGTH OF SERVICE

HMMA considers "length of service" (LOS) as the period of continuous employment, starting from your date-of-hire and applies to all full-time Team Members. Length of service will be broken when a Team Member:

- resigns from employment (leaving the plant without proper authorization is considered voluntary resignation)
- is terminated from employment
- fails to return to work on the day following the end of a personal, medical, military, or other leave of absence, unless unusual conditions or circumstances exist that would prevent the Team Member from returning on the scheduled day
- retires
- fails to communicate with HMMA regarding an absence of three (3) consecutive days or longer (subject to the Family and Medical Leave Act and regulations)
- is not actively employed with HMMA for 12 consecutive months or length of service, whichever is the lesser.

A Team Member who voluntarily terminated his/her employment, and who is rehired, will not have any prior service restored. The date of rehire

be as follows:

SHIFT	SHIFT START TIME	SHIFT END TIME
Production		
1st Shift	6:30 a.m.	3:15 p.m.
2nd Shift	5:15 p.m.	2:00 a.m.
Maintenance		
1st Shift	6:30 a.m.	3:15 p.m.
2nd Shift	5:15 p.m.	2:00 p.m.
3rd Shift	10:00 p.m.	6:45 a.m.
Administration		
1st Shift	8:00 a.m.	4:45 p.m.

There may be times when Team Members will be asked to work irregular hours due to production requirements. Any deviation in HMMA's weekly scheduled hours must be reviewed and approved by the payroll and benefits manager or his/her designee prior to any change in HMMA's normal work schedule. Any permanent adjustment to any HMMA Team Members regularly scheduled work hours must have approval by the director of Human Resources.

BREAKS AND COMMUNICATION PERIODS

Break Periods

HMMA provides all Team Members with two (2) ten (10) minute paid break periods per day. The first break period will be given in the first half of the Team Members shift; the second break period will be given in the second half of the Team Members shift. All Production Team Members will be provided specific time for each of the described breaks. Due to the nature of Maintenance Team Members responsibilities their breaks will be given at their convenience. In order to allow Administrative Team Members the ability to maintain the continuity of their responsibilities they may take their breaks at their convenience.

There will be times when HMMA schedules overtime. In these situations the Team Member will be given a 5 minute break for every hour of scheduled overtime. These breaks must be given at the end of the eighth hour of work.

Communication Period

Each Team will have a five minute paid communication meeting at the beginning of each shift. This meeting is for the manager, group leader, or team leader to communicate important information to the team.

ATTENDANCE

Regular attendance is the cornerstone for the success of HMMA. A Team Member's absenteeism can reduce the quality and effect of the overall efficiency of HMMA's operations, as well as cause hardship on fellow Team Members who report to work regularly. Regular attendance

will become the new service date. Computation of service, for retirement purposes and the effect of breaks in service for retirement rights, however, will be determined in accordance with the Employee Retirement Income Security Act of 1974 (ERISA).

Transfer opportunities will be awarded based on LOS. In situations where more than one Team Member has the same LOS, HMMA will use the first letter of the Team Members last name as the tie breaker. If the Team Members last names begin with the same letter, then HMMA will use the second letter as the tie breaker and so on.

Position Advancement Opportunities will be based on qualifications. In situations where more than one Team Member has the same LOS, HMMA will use the first letter of the Team Members last name as the tie breaker. If the Team Members last names begin with the same letter, then HMMA will use the second letter as the tie breaker and so on.

EMPLOYMENT OF RELATIVES

Relatives of Team Members may be employed at HMMA; however, they may not work or come under the direct supervision of another relative. Relatives are defined as those people who are related either by birth, adoption, or marriage.

The employment of relatives at certain levels of HMMA in positions where one might have influence over another will not be allowed.

TEMPORARY WORKERS AND REPLACEMENT WORKERS

HMMA intends to utilize temporary and replacement workers to reduce temporary peaks of excess overtime, perform special projects, and fill vacancies while Team Members are on military leave, personal leave, or medical leave of absence. Use of temporary replacement workers also helps HMMA avoid potential layoffs.

TEAM MEMBER ORIENTATION

HMMA will provide every Team Member with the training needed to understand HMMA's philosophies. Each Team Member will receive an orientation outlining HMMA team concepts, policies, benefits, and all other aspects related to their employment at HMMA.

HOURS OF WORK

Hours of Work

HMMA's normal work week for all production and administrative (non-exempt) Team Members consists of forty (40) hours per week based on an 8 hour work day five days per week. HMMA's normal work week for all administrative exempt Team Members consists of forty-five (45) per week based on an 8 hour work day and 5 hours of casual time per week. All production and maintenance Team Members will rotate shifts every 4 months. Production, maintenance, and administrative shift hours will

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is every Team Member's responsibility, and every Team Member is expected to be on the job, on time, every scheduled workday.

The minimum acceptable standard of attendance is 98%.

Any scheduled workday missed is considered an absence. However, work time missed due to holidays, scheduled vacations, catastrophic event, jury duty, military duty, bereavement leave, short-term disability, work-related injury or illness, personal leave of absence and FMLA leave shall not be counted as an absence and are not cause for corrective action.

If a Team Member is absent due to a catastrophic event that results in a legally declared emergency which results in the closure of all major roads in the Team Member's county of residence, or if a Team Member must drive through such a county on the way to work, such absences will not count against the Team Member's attendance for the purpose of calculating the acceptable standard of attendance, nor be cause for corrective action. Final approval as to the declaration of a "Catastrophic Event" shall be made by the director of Human Resources.

Team Members who are not in their work area ready for work by their scheduled starting time will be counted as one-half day absent for calculating attendance only, excluding the following events:

A verifiable catastrophic event such as an accident causing road blockage of major highways, a major weather-related closure of roads, or other acts of God which result in Team Members being tardy will be evaluated on a case by case basis. If it is determined by HMMA that there is a significant adverse impact on HMMA Team Members, the tardy shall not affect a Team Member's attendance record.

Team Members who leave prior to the end of their scheduled shift (including overtime hours) with their group leader's and/or manager's permission are considered to have left early. A leave early will be considered as one-half day of absence for purposes of attendance calculation.

Any situation where a Team Member leaves the facility during scheduled work time (including overtime whether scheduled or voluntary) without their group leader, manager, senior manager, or any other member of management's authorization, the Team Member will be considered to have voluntarily resigned from his/her employment at HMMA.

Attendance will be calculated using a rolling calendar year using the following formula:

- Calculate the number of scheduled workdays. Scheduled workdays will include all excused scheduled workdays.
- Calculate the number of unexcused workdays.
- Subtract the number of unexcused workdays from the number of scheduled workdays and divide the remainder by the number of scheduled workdays to arrive at the Team Member's attendance percentage.

o Example:

237 Scheduled workdays
 $\frac{-5}{232/237} = 97.9\%$ unexcused workdays

When a Team Member's attendance falls below 98% at any time during the first year or subsequent years of employment during any rolling twelve-month period, corrective action will be considered. The rolling twelve-month period is a 365-day period.

Every Team Member is expected to notify his/her group leader and/or manager, in advance, of any known absence or future absence. When an absence is not known in advance, the Team Member must notify his/her group leader and/or manager 30 minutes prior to the start of the shift.

Failure to notify within 30 min. at start of the shift may result in corrective action up to and including termination.

Accumulative absences that result in a Team Member's attendance percentage falling below 98% may be cause for corrective action.

The following will be considered:

- Cause
- Frequency
- Patterns
- Failure to report
- Time pattern of reporting

A Team Member that does not communicate to his/her group leader and/or manager regarding his/her absence for a period of three (3) consecutive days or longer is considered to have voluntarily resigned his/her employment at HMMA.

HMMA will maintain appropriate attendance records. Any corrective action necessary is taken by the group leader and/or the manager. The appropriate team relations representative will be in attendance.

The corrective action process is intended to help Team Members correct any attendance problems. However, if the Team Member's attendance continues to be unacceptable it could result in further corrective action up to and including termination.

When a Team Member's attendance percentage falls below the acceptable standard, corrective action may be considered. Corrective action is not automatic. Each Team Member's attendance record will be reviewed based on its own merit, and the circumstances in each case are considered. However, when corrective action is taken, the following steps must be followed:

- 1 Informal Discussion
- 2 Formal Discussion
- 3 Commitment Discussion

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4 Decision Leave

The team relations representative will be consulted for guidance at each step of the aforementioned corrective action steps. The team relations representative will also attend each step as it occurs.

When corrective action is required beyond the four steps above, the Team Member's group leader and/or manager will contact the team relations manager and request a review of the Team Member's record for termination. No termination will take place unless the action is reviewed and approved by the team relations manager, section manager, and director of Human Resources.

WORK WEEK

HMMA's work week begins at 12:01 a.m. Monday and ends on Sunday at 11:59 p.m.

OVERTIME

Non-exempt Team Members

Due to the nature of the automotive industry there will be times when we will be required to work overtime in order to meet our customer's needs. Overtime will be paid in one-tenth hour increments; any overtime worked will be paid during the normal pay cycle and included in the regular payroll check.

Overtime is calculated using the base rate of pay plus shift premium and team leader premium, if applicable. Overtime will be paid at 1.5 times the Team Member's regular rate of pay for any time worked in excess of eight hours during the normally scheduled work day as long as 40 hours of work has been achieved for that work week. Team Members will be paid at 1.5 times their regular rate of pay for time worked on Saturday or the sixth work day. Additionally, Team Members will be paid 2 times their regular rate of pay for time worked on Sunday or the seventh day of continuous work. Team Members who work on an approved HMMA holiday will be paid at 2 times their rate of pay. Vacation time will count as hours worked when calculating overtime.

Exempt Team Members

Assistant managers and specialist Team Members wages are based on a 40 hour work week and 5 hours of casual overtime. Casual overtime is time that is worked without approval. Assistant managers and specialists will be paid at 1.5 times their calculated regular hourly rate for all pre-approved overtime.

In situations where the assistant manager and/or specialist Team Member is required to work because of scheduled production overtime they will be paid at 1.5 times their calculated hourly rate. Due to the fact that production overtime is scheduled and the assistant manager and/or specialist is required to work in order to support production needs the overtime will

be considered as pre-approved. Additionally, the casual overtime rule will not apply in this situation.

PAY

HMMA reviews wages each year and makes appropriate changes to the wage scale based on several factors, such as: automotive industry, HMMA's performance, and the cost of living. Each Production and Maintenance Team Member will receive a base rate when joining the HMMA family and will receive a rate increase periodically over a 24 month period until they reach the top pay rate.

PAYDAY

All Team Members will be paid on Tuesday on a biweekly basis.

DIRECT DEPOSIT

All HMMA Team Members are required to use direct deposit. Each Team Member will receive an advice stub which will itemize pay and deductions in detail. Any questions regarding direct deposit should be directed to the Payroll and Benefits Department.

QUESTIONS REGARDING PAY

If any Team Member has a question regarding pay, they are to contact their manager/assistant manager/group leader. The manager/assistant manager/group leader will notify the payroll department of any issues concerning pay and report back to the Team Member or arrange a meeting with the payroll department for the Team Member.

"CALL IN" PAY

HMMA will pay for a minimum of four hours work at the regular straight time hourly rate for those Team Members who are called to work at a time other than their regularly scheduled work hours (before or after, but not continuous with their regularly scheduled shift). If there is at least four hours work available and the Team Members are given the option to work less hours, they will be paid only for the hours worked if they exercise the option to leave early.

"REPORT IN" PAY

If the scheduled production is canceled due to any emergency, prior to the start of the shift and at least one hour of notification has been provided to the Team Members, no work will be available and no pay made to the Team Members.

If the scheduled production is canceled due to any emergency and less than one hour of notification is provided, Team Members will have the option of leaving and receiving pay only for the time worked or staying for a total of four hours. If the Team Member elects to remain at work, he or she must leave the plant at the end of this period.

If the notification of canceled production is made after four hours of work from the normal scheduled starting time of the shift have been completed, Team Members will have the option of leaving and receiving pay only for the time worked or staying until the end of the regular shift. Team Members that have not been given their options and have been forced to leave will be paid for 8 hours.

Anytime a Team Member volunteers to go home early or is required to go home early, the Team Member may elect to use any available vacation time to make up for lost income. This time will always be excused and the lost time will not count against the Team Member's attendance.

STATEMENT OF EARNINGS

Each Team Member will receive a yearly statement of earnings. The yearly statement of earnings is known as a W-2 Withholding Statement which provides the amount earned and the taxes that have been withheld. The W-2 will be issued in January each year for use in filing income tax forms.

GARNISHMENTS

HMMA respects every Team Member's right to privacy with regard to personal and confidential information. However, HMMA may be required, by law, to withhold a portion of your pay if served with a court notice of a garnishment, wage assignment, wage deduction, or government levy. When situations such as this occur HMMA's payroll department will notify you of any pending action involving such matter that requires a wage withholding situation.

BENEFITS

HMMA benefits are described in the Summary Description Plan.

ATTENDANCE INCENTIVE PROGRAM

HMMA will pay a premium of \$100.00 to non-exempt and exempt Team Member's up to assistant manager for perfect attendance for each 4-week period. All regular, full-time, non-exempt and exempt Team Members up to assistant manager are eligible to participate in the Attendance Incentive Program.

During the probationary period, a Team Member is not eligible to participate in the Attendance Incentive Program. A Team Member becomes eligible the first full 4-week attendance period following the end of his/her probation period.

The Team Member must maintain a perfect attendance record for a four (4) week attendance period to receive an attendance incentive. Perfect attendance is defined as no absences, including tardiness, early leave, lost time including scheduled overtime, or personal leaves.

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The only exceptions to this policy are:

- HMMA observed holiday, unless the Team Member is scheduled to work on the holiday
- Scheduled Vacation
- Personal Days (HMMA may require documentation)
- Jury Duty
- Military Leave. Military leave shall be considered in accordance with applicable law.
- Bereavement Leave
- The balance of a shift lost due to an occupational illness/injury.
- Workers Compensation related doctor appointments. (When a Team Member misses part of a day due to a workrelated injury/illness doctor appointment scheduled by the HMMA Medical Clinic.)
- Any work-related activities away from the plant
- Any medical leave, either work-related or non-work related that is determined to be FMLA
- Any leave that is determined to be FMLA

FMLA

General Provisions

It is the policy of HMMA to grant up to 12 weeks of family and medical leave during any 12 month period to eligible Team Members, in accordance with the Family and Medical Leave Act of 1993 (FMLA). The leave may be unpaid, paid, or a combination of unpaid and paid leave, depending on the circumstances of the leave and as specified in the policy.

A Team Member must have worked for HMMA for 12 months, or 52 weeks. In addition a Team Member must have worked at least 1250 hours during the 12 month period immediately before the date when the leave is requested to commence.

In order for the leave to qualify under the policy, the Team Member must be taking leave for one of the reasons listed:

- The birth of a child and in order to care for that child;
- The placement of a child for adoption or foster care, and to care for the newly placed child;
- The care of a spouse, child, or parent with a serious health condition; or
- The serious health condition of the Team Member.

HMMA may ask for certification of the serious health condition. The Team Member should try to respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification may be provided by using the medical certification form. Request for medical certification must be made in writing as part of

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HMMA's response to the Team Member's request for leave.

All Team Members requesting leave under the policy must provide verbal notice with an explanation of reason(s) for the needed leave to their immediate supervisor, who will advise the Benefits Department. If the leave is foreseeable, the Benefits Department may require the Team Member to provide a written request for leave and reason(s) for that leave. Failure of the Team Member to provide a written request for leave cannot be grounds to deny or delay the taking of FMLA leave.

HOLIDAYS

HMMA observes paid holidays each calendar year. HMMA will review the holiday schedule each year and communicate to all Team Members the holiday schedule for the coming year in November. All full time Team Members and team leaders are eligible for holiday pay, which includes shift premium if applicable. All full time Team Members will be eligible for holiday pay as of their first day of employment.

All Team members must work his/her last full scheduled workday before the holiday and the first full scheduled workday following the holiday in order to receive holiday pay.

All non-exempt Team Members and exempt Team Members up to assistant manager will be paid double time for hours worked on a designated HMMA holiday.

VACATION NON-EXEMPT/EXEMPT TEAM MEMBERS

HMMA realizes that vacation is an important benefit for all Team Members. HMMA's intention is to provide Team Members with a means to take a scheduled vacation without loss of pay. Vacation does not apply to holidays, bereavement leave, jury duty or military leave pay. The vacation allowance is granted for the calendar year only. Once it is used for the year, it is not renewed until January 1st of the next calendar year.

A Team Member's vacation eligibility is determined based on his/her length of service with HMMA and is to be used during the calendar year January 1st through December 31st. Any Team Member that has not worked hours for the year in which the vacation is scheduled will not be paid until at least one day has been worked in the qualifying year. Although Team Members must actually perform work in a new calendar year before qualifying for vacation, Team Members may use their vacation in January if it is connected with vacation or a holiday from the previous year. Five vacation days are reserved and must be used during HMMA's summer shutdown. However, a Team Member may use these days prior to shutdown for Family Medical Leave or if the Team Member is scheduled to work the vacation days that are reserved for the summer shutdown period. Anticipated unused shutdown vacation days may not be scheduled for dates before the actual shutdown occurs.

Starting the year of the Team Member's second anniversary, the Team

Member is eligible for vacation according to the following schedule. (The Team Member's vacation allowance is available as of January 1st each year)

Team Members with:

- Less than one year will receive a prorated vacation based on the following
 - o January -- 10 days vacation
 - o February -- 9 days vacation
 - o March -- 8 days vacation
 - o April -- 7 days vacation
 - o May -- 6 days vacation
 - o June -- 5 days vacation
 - o July -- 4 days vacation
 - o August -- 3 days vacation
 - o September -- 2 days vacation
 - o October -- 1 days vacation
 - o November & December -- 0 days vacation
- Beginning January of the next year Team Members will receive:
 - o 1st year -- 10 days vacation
 - o 2nd year -- 11 days vacation
 - o 3rd year -- 12 days vacation
 - o 4th year -- 13 days vacation
 - o 5th year -- 14 days vacation
 - o 6th year -- 15 days vacation
 - o 7th year -- 16 days vacation
 - o 8th year -- 17 days vacation
 - o 9th year -- 18 days vacation
 - o 10th year -- 19 days vacation
 - o 11th year -- 20 days vacation
 - o 12th year -- 21 days vacation
 - o 13th year -- 22 days vacation
 - o 14th year -- 23 days vacation
 - o 15th year -- 25 days vacation

A Team Member's vacation pay is based on the Team Member's regular base pay at the time, but not more than eight (8) hours per day. Any vacation will include any shift differentials a Team Member is currently receiving. Vacation cannot be taken on Saturdays, Sundays, or holidays.

SCHEDULING VACATION

In order for HMMA to plan proper coverage for Team Member vacations, the scheduling period for the subsequent year's vacations will be during November and December as follows:

- Full week and single days of vacation for January and/or February must be scheduled between November 1 and

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- November 30 of the preceding year.
- Full weeks and single days of vacation for the remainder of the year - March through December - must be scheduled between December 1 and December 22 of the preceding year.
- Full weeks take precedence over single day vacation requests.
- Single days take precedence over 1/2 day vacation requests.
- When two (2) or more Team Members with the same length of service request the same dates for time off, the last letter of the Team Members' names will be used to determine who has first preference.

SUMMER SHUTDOWN

HMMA reserves the right to schedule a plant shutdown each year. When a plant shutdown is planned, HMMA will inform Team Members of the planned shutdown by the end of December the prior year. HMMA reserves the right to require the Team Members to use up to 5 days of his or her vacation if needed during the shutdown period.

There may be occasions when it is necessary to schedule work during HMMA's summer shutdown period. When it is necessary to schedule work, each department will notify Team Members 30 days prior to the planned summer shutdown, which they will be required to work.

Procedure

The manager and/or group leader will solicit volunteers and/or require Team Members to work during the shutdown period using the following criteria:

- **Soliciting Volunteers:**
 - Solicit volunteers based on length of service for shut down days that are not holidays. The Team Member volunteering with the longest length of service will be awarded the work. If two or more Team Members volunteer with the same length of service, the first letter of their last names will determine which Team Member is awarded the work.
 - If the voluntary work being offered is an HMMA holiday, the manager and/or group leader will use the overtime equalization chart to determine which Team Member will be awarded the overtime, as stated in the Equalization of Overtime Policy.
- **Required Work:**
 - When requiring Team Members to work on shutdown days that are not holidays, start from the bottom of the length of service list until the required manning is obtained.
 - All Team Members who volunteer or that are required to work during an HMMA shutdown that involves reserved vacation days will be eligible to reschedule

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the vacation days.

- **Skills Requirement**
 - In overtime situations that require a specific skill and or qualifications to accomplish this job task. Skill will take precedence over length of service.
 - If more than one Team Member has the skill and qualifications, overtime equalization should be used as a determining factor and then length of service if applicable.

Medical Leaves During Shutdown Periods

All Team Members that are on an approved medical leave, or personal leave during the shutdown period will be paid for any vacation reserved for the shutdown period, and will not be eligible to reschedule vacation days reserved for the shutdown period.

Canceled Vacation

Team Members who choose to cancel their scheduled vacation must notify their manager and/or group leader as soon as possible. Team Members may only cancel a scheduled vacation one time per scheduled year.

When a Team Member cancels a scheduled vacation week or day, he/she may reschedule the canceled vacation to any open block of available vacation time. The opportunity for the canceled week or day will be posted in a central area for the entire group or department, whichever is applicable, for 48 hours following the cancellation.

Personal Days

All Team Members will be given three Personal Days each year. HMMA encourages its Team Members to schedule their Personal Days in advance if possible. However a Team Member may use Personal Days at their discretion for emergency situations or unforeseen circumstances (HMMA may require documentation) that prevent them from reporting to work, leaving early, or reporting late to work.

If a Team Member is already at work and needs to leave, the Team Member must contact his/her manager and/or group leader and get approval before leaving the plant. If the Team Member does not contact his/her manager and/or group leader or another member of management and leaves without proper authorization, he/she will be considered to have voluntarily resigned.

Personal Day Limitations

- Personal Days were not developed to extend vacation periods or to be utilized in lieu of vacation
- Personal Days were not intended to be used to extend a holiday period, however if a verifiable unforeseen circumstance were to arise the Team Member would be

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- allowed to utilize a personal day to cover his/her absence.
- Can not be used during the New Hire 90 day probation period.
 - If a Team Member uses a Personal Day on a Saturday or Sunday for a verifiable emergency he/she will not be eligible for compensation at a premium rate, but will be compensated at a straight time rate and may be required to provide documentation.

Scheduled Personal Days

- Must be scheduled in advance of the day taken (before close of previous shift).
- Must be approved in advance by immediate supervisor (may also be denied by immediate supervisor if manning not sufficient).
- Does not require documentation or explanation.
- Scheduled Personal Day will not effect attendance percentage.
- Scheduled Personal Day will remain eligible for attendance bonus.
- Scheduled Personal Day before a holiday will not disqualify holiday pay.
- Scheduled Personal Day before "scheduled Saturday/Sunday" does not allow for missing Saturday/Sunday if scheduled.
- Scheduled Personal Day can be used on production Saturday/Sunday (or day that team member is scheduled to work).
- Scheduled Personal Day will be paid at straight time (regardless of day requested).

Unscheduled Personal Days

- Must only be used for emergency purposes.
- Emergency reason may be required to be documented.
- Documented emergency will still be eligible for attendance bonus.
- Un-documented emergency will disqualify for attendance bonus.

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- Non-emergency use will disqualify for attendance bonus.
- Un-documented/non-emergency use before a holiday will disqualify holiday pay.
- Un-documented/non-emergency use will not count against attendance percentage.
- Un-documented/non-emergency use to cover tardy will disqualify attendance bonus.
- Utilizing to cover tardy will not count against attendance percentage.
- Unscheduled Personal Day can be used on production Saturday/Sunday (or day that team member is scheduled to work).
- Unscheduled Personal Day will be paid at straight time (regardless of day requested).

Transfers

If a Team Member transfers to a new Team, the Team Member will be required to reschedule his or her vacation.

Unscheduled Vacation

A Team Member's vacation allowance does not accumulate and must be taken in the calendar year in which it is earned. Team Members will be paid for any unscheduled vacation on the first pay period in February of the following year.

Vacation Eligibility

All regular, full time, exempt Team Members are eligible for vacation.

Vacation is earned by the Team Member each January. In order for the Team Member to be eligible for vacation he/she must have reported for work in the year of eligibility.

Requests for vacation days must be submitted to the supervisor one week in advance. The supervisor is required to approve or deny the request within 48 hours.

Unused Vacation Time

A Team Member will not be allowed to carry over unused vacation into the next year. Team Members that have vacation days remaining after the close of the calendar year (December) will be paid for any remaining vacation time by the first pay period in February.

Upon separation from employment with HMMMA, the Team Member's vacation will be prorated and the Team Member will receive pay for any unused vacation during the year in which the termination occurs. If a

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Team Member should die during the term of employment, pay for unused vacation will be paid in a lump sum to the Team Member's beneficiary (as designated for retirement plan).

A Team Member's vacation pay is based on the Team Member's regular base pay at the time, but not more than eight (8) hours per day. Any vacation will include any shift differentials a Team Member is currently receiving. Vacation cannot be taken on Saturdays, Sundays, or holidays.

Personal Leave

In an effort to recognize the need of Team Members who require time off in addition to personal days or vacation, HMMA may consider a personal leave of absence without pay for up to a maximum of thirty (30) days.

All regular permanent, full time Team Members employed by HMMA for a minimum of ninety (90) days are eligible to apply for an unpaid personal leave of absence. Departmental requirements will all be taken into consideration before a request is approved. Requests for unpaid personal leave may be denied or granted by HMMA. Approvals of the immediate supervisor, department director, and Director of Human Resources are required. All personal leaves are unpaid leaves.

An eligible Team Member should submit a request in writing to his/her immediate supervisor.

A Team Member is required to return from the unpaid personal leave on the originally scheduled return date. If the Team Member is unable to return, he/she must request in writing the extension of the leave.

If HMMA does not extend the leave, the Team Member must then return to work on the originally scheduled return date or be considered to have voluntarily resigned from his or her employment. Extensions of leave will be considered on a case-by-case basis.

BEREAVEMENT LEAVE

The bereavement leave policy was developed to provide Team Members with a suitable period of time away from work, with pay, in order to properly attend to the arrangements required when a death in the Team Member's family occurs.

The Team Member's group leader or management Team Member should be immediately notified when such leave is needed.

A bereavement leave of absence, with pay, for a period not to exceed five workdays shall be granted to a Team Member when death occurs to the Team Member's:

- parent
- stepparent
- spouse

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- child or stepchild

A bereavement leave of absence, with pay, for a period not to exceed three workdays shall be granted to a Team Member when death occurs to a member of a Team Member's family.

For the purpose of this policy, the Team Member's family shall be defined as follows:

- In the event of a miscarriage, if a death certificate is issued, then the above policy will apply
- Mother-In-Law/Father-In-Law
- Sister/Brother
- Grandparent/Grandchildren
- Stepsister/Stepbrother
- Grandparent-In-Law
- Half-sister/Half-brother
- Great Grandparents
- Son-In-Law/Daughter-In-Law

Exceptions may be made to the "Team Member's family" provisions if the deceased was a relative or foster parent and the Team Member resided with or was reared by the deceased.

In the event of the death of a Team Member's relative not mentioned above the Team Member will be excused, with pay, for up to one day (8 hours). This applies to the following family members only:

- Aunts
- Uncles
- First cousins
- Nephews
- Nieces
- Brother-In-Law and Sister-In-Law

When a Team Member is on vacation and a member of the Team Member's family dies, the time off will be considered as bereavement leave. Vacation time missed because of the death may be utilized at a later time. If an official HMMA holiday occurs during time considered as bereavement leave, the Team Member's bereavement will begin the day following the holiday. In addition, Saturdays, Sundays and holidays are not considered as bereavement. Any Team Member who is off on a Friday for an approved bereavement leave will not be expected to work on the Saturday or Sunday after the approved bereavement leave.

All bereavement leaves of more than one day must be taken on consecutive work days. (For example: Tuesday, Wednesday, Thursday, or Friday, Monday, Tuesday).

A Team Member who leaves during his or her shift due to the death of a family member that qualifies for bereavement leave will receive eight hours of total pay for that day. By leaving during the shift, the Team

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Member has started his/her bereavement leave and the partial day will count as a full day of the allowable bereavement leave.

HMMA may request documentation for verification to be retained with the leave of absence request.

JURY DUTY

HMMA will provide income protection while a Team Member carries out his/her civic responsibility regarding jury duty.

Upon receipt of notification from the state or federal courts of an obligation to serve on a jury, the Team Member should notify his/her supervisor. The Team Member is required to provide copies of the jury subpoena or jury summons to his/her supervisor and to the Payroll Department.

Any Team Member appearing as a plaintiff, defendant, and/or witness in any legal proceeding, or for other appearances related to legal proceedings or court cases (e.g. deposition testimony), whether or not pursuant to a court-issued subpoena will not receive paid time off. Vacation, personal time, or unpaid time should be used for these instances.

MILITARY LEAVE

Team Members who are inducted into the U.S. Armed Forces or who are reserve members of the U.S. Armed Forces or state militia groups will be granted leaves of absence for military service, training, or other obligations in compliance with state and federal laws. These Team Members may use accrued vacation leave but are not required to do so. At the conclusion of the leave, Team Members generally have the right to return to the same position they held prior to the leave or to a position with equivalent seniority, pay and benefits. HMMA will pay the difference between military pay and regular wages/salary for up to one month. Team Members are requested to notify their supervisor as soon as they are aware of the military obligation. Questions regarding HMMA military leave policy, applicable state and federal laws, and continuation of benefits should contact the Human Resources Department.

TEAM WEAR

The purpose of *Team Wear* is to support the spirit of team work, build open communication, ensure safety for Team Members, protect product finish, ensure proper security and identify visitors.

Team Wear will be worn by all Team Members in a neat and appropriate manner during normal business hours, except when a special business meeting requires other clothing. *Team Wear* may be worn to and from work. The *Team Wear* concept also applies to interns & co-op Team Member who are issued *Team Wear* by HMMA.

Other HMMA apparel is not considered *Team Wear* and should not be worn during normal working hours. Likewise, jackets, sweaters and

sweatshirts not issued or purchased through the *Team Wear Collection* should not be worn over *Team Wear* during business hours.

The color choices at the present time are:

- pants/skirts in khaki, navy, grey, olive and black
- shirts in tan, white, blue & blue/white, herringbone, green, slate blue, denim, khaki, and black.

Team Members will also have choices of sweatshirts and sweaters which are also embroidered with the company logo.

Skirts may be hemmed to no more than 3 inches above the top of the knee.

All alterations will be done at Team Member expense. Safety issues and mutilation hazards for clothing should be kept in mind when altering clothes.

Team Wear is provided to Team Members once each 18 months. During orientation each Team Member will order his/her initial set of:

- 5 pants/skirts
- 5 tops
- 1 hat
- 1 belt

Every 18 months Team Members will receive a full replacement set of *Team Wear* due to wear and tear. Team Members will also have the option to purchase, at their own expense, pants/skirts in the same approved colors as those provided by HMMA.

Jeans (blue, black or any other color) are not considered appropriate for work at HMMA and are not to be worn during normal working hours. All items must conform to the *Team Wear* concept. Safety issues and protecting the finish of the vehicle should be taken into consideration when choosing *Team Wear* (100% cotton clothing is required in some areas and loose clothing is not allowed on production lines).

Team Wear which is damaged during work hours at HMMA will be replaced.

Maternity wear is available upon request. The choices will include a navy jumper, navy slacks and a white blouse. The jumper must be dry cleaned at the Team Member's expense. Due to changes in sizes, maternity clothing may be requested twice during pregnancy. Team Members may choose to wear maternity clothing of their own choosing (and expense) if the colors match those outlined above.

Additional HMMA apparel from the HMMA *Team Wear Collection* may be purchased by the Team Member through the supplier for Team Member use only. *Team Wear* may not be purchased for family members, however, Hyundai logo items may be purchased through the HMMA

Gift Shop. Team Members will bear the expense of tax and shipping for individual purchases.

Note: No pins, buttons, or other items may be worn on HMMA Team Wear unless it is issued by HMMA. Furthermore, only HMMA issued hats may be worn at HMMA. All HMMA head wear must be worn as issued and may not be altered. The only acceptable alteration is the addition of the Team Members name.

SAFETY

HMMA's goal is to eliminate potential hazards before they become an accident. Every Team Member is responsible for safety not only for themselves but for others. We can all prevent incidents by avoiding unsafe acts, reporting unsafe acts and conditions and by learning and following the policies and procedures that have been developed to keep our facility safe.

Safety Committees

HMMA's safety committees provide Team Members an opportunity to participate in safety improvements in their areas. The safety committees will conduct area audits, identify safety training needs and support safety awareness programs in the facility.

Safety Wear

As part of HMMA's total Team Member safety program, special clothing and other apparel designated by department managers and the Safety/Environmental Department must be worn by Team Members, when and where required, to help guarantee your personal safety.

Hard Hats and Bump Caps

Hard hats (heavy-duty, impact-resistant hats) must be worn in work areas where there is danger of falling objects or hazardous conditions. Bump caps (lighter weight hats) may be required in some areas as an additional means of protection. Team Members are reminded to obey signs or directions in areas where such protective devices must be worn.

HMMA will issue all bump caps and hard hats. Only HMMA-issued hats may be worn. Additionally, safety caps may not be altered in any way. The only exception is the addition of the Team Members name.

Shoes

HMMA safety-approved shoes are required in many areas of the plant and are necessary to safeguard your health. HMMA has established a specified dollar amount it will pay toward the purchase of safety shoes. Contact the safety department for the exact amount.

Safety Glasses

All Team Members, vendors and visitors at HMMA are required to

wear OSHA-approved safety glasses in the production areas. Safety glasses are provided by HMMA and can be ordered through the Safety Department. Eye examination charges are not covered under this program. Safety glasses do not have to be worn when entering, exiting, or during breaks and lunch.

Personal Protective Equipment (PPE)

When it is required, use of special safety equipment by Team Members shall be regarded as a condition of employment. Further information will be given to you during your training regarding equipment needed for your job. If you are not sure of the PPE required in your work area, please contact your group leader.

Housekeeping

Good housekeeping habits allow all HMMA Team Members to be safe in their work areas as well as the ability to work more efficiently. Each Team Member is responsible for maintaining their work area. If we allow dust and dirt to accumulate or if we do not regularly maintain the work area safety hazards may occur. Team Member is responsible for disposing of trash both inside and out into the proper receptacle. Failure to adhere to the aforementioned is considered to be a performance issue and could result in corrective action.

Lock-out/ Tag-out Procedures

The safety of all HMMA Team Members is a primary concern. In order to protect all Team Members from danger, we have established a Lock-out/Tag-out procedure to protect all those who enter machinery, work within machinery, or use machinery as part of their job duties at HMMA. Only authorized Team Members who have completed lock-out/tag-out training may work within machine guarding or enter machinery. Strict compliance with the lock-out/tag-out procedures and rules are required from all HMMA Team Members and contractors at all times.

HMMA will issue each trained and authorized Team Member a personal safety lock along with an identification tag. The Team Members lock and tag is required to be properly attached to the lock-out devices located on each piece of machinery's control panel before entering. In situations where multiple persons must enter a piece of machinery requiring lock-out/tag-out, each person must attach his/her lock and tag to the lock-out device with a multi-lock hasp. All locks and tags must be removed before the equipment is restarted.

Because of the differences in each machine or piece of equipment, the Team Member should learn the proper method of locking and tagging each piece of equipment they operate, repair or maintain. If a Team Member is unsure about the procedures for locking out the equipment, the Team Member must ask their manager and/or call the Safety Department for assistance.

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SPECIAL AUTHORIZATION PERMITS

Because of the varied types of work required, certain types of work require special authorization and/or training. Areas designated as confined space or certain welding operations require a permit prior to beginning work.

Confined Space Entry Permits

When a location is designated a "confined space" it requires specialized training before a Team Member can work in the designated area. Confined spaces present characteristics of an atmosphere or have the potential for serious safety and/or health hazards.

Lack of oxygen or contamination of the air is possible in confined spaces. No Team Member or contractor is allowed to enter a "permit required" confined space unless they have received the proper training and the area has been adequately tested and a confined space entry permit has been issued. When training and/or a permit is needed contact the Safety Department to obtain training and/or a permit.

Hot Work

There are areas within our facility that are susceptible to fire and explosions. Because of these dangers Team Members planning to do "hot work" in these areas must obtain a hot work permit before performing cutting, welding and/or spark producing work. Hot work being done on welding lines and in authorized maintenance areas does not require a hot work permit unless otherwise posted. All hot work permits must be obtained from the Safety Department.

Area Specific Safety Rules

Individual areas within our facility will have area specific safety requirements. These include but are not limited to:

- Rules for the proper use of different kinds of tools and equipment
- Rules for performing different kinds of operations
- Proper techniques for lifting or performing other physical activity

Each department will be responsible for communicating the safety rules that apply to your particular job function. If a Team Member is unsure of the safety requirements for their work area they are to contact the manager for the department or the Safety Department.

SECURITY

Foreign Trade Zone (FTZ)

HMMA is designated as a FTZ under the Foreign Trade Zone Act of 1934.

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The FTZ makes it possible for HMMA to receive parts from other countries without paying the required duty tax until the parts leave the FTZ as part of a completed vehicle. Operation of the FTZ is under the supervision of U.S. Customs Service and therefore HMMA is required to operate under stricter security than you may be accustomed.

Video Surveillance

At HMMA the security of our Team Members as well as our product is important to us.

In order to ensure our Team Member's safety, protect our product, and maintain the FTZ zone, HMMA uses video surveillance throughout our facilities.

HMMA Identification Badges

HMMA identification ("ID") badges are issued on the first day of employment. All HMMA Team Members are required to wear their ID badges, and have them visible when entering and exiting HMMA. Team Members do not have to have their badges visible when they are in their assigned work area. However, the Team Member must wear, and have their badge visible when traveling between HMMA facilities. Personal identification from your ID badge is an FTZ requirement. Security personnel may periodically inspect badges. All Team Members will be required to return his/her badge to security on their last day of employment. If any Team Member loses their identification badge, the Team Member is to notify Security immediately so that a new badge can be issued and activated.

Parking/Traffic Control

The ability to park on HMMA premises is allowed during scheduled work times. At HMMA we have reserved parking spaces for visitors as well as for the disabled. Here at HMMA, all other Team Members have equal access to parking and parking spaces on a first come first serve basis. All Team Members are responsible for parking in the proper parking spaces and for respecting the visitors and disabled parking areas.

Additionally, HMMA has a posted speed limit as well as designated lanes which allow for smooth traffic flow in and out of the facility. All Team Members are required to follow all posted limits, as well as safe driving habits, to ensure the safety of all HMMA Team Members and visitors. Any Team Member found in violation of these rules is subject to corrective action up to and including termination.

CAREER OPPORTUNITY PROGRAM

The purpose of the HMMA Career Opportunity Program (COP) is to encourage promotion from within HMMA and to ensure that all qualified Team Members have an equal opportunity for job advancement. This program is designed to provide an effective means of communication to Team Members of specific job vacancies within HMMA. This policy will

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be administered by the Employment Department.

It is the intent of HMMA to fill job vacancies from within the organization when Team Members with the skills and qualifications for the positions are available. In the event a posted position cannot be filled from within HMMA due to a lack of qualified Team Members external sources can and will be utilized to fill the position. Job advancement and transfers will be made without regard to race, color, religion, sex, age, national origin, veteran status, or disability.

This program will be used for exempt and non-exempt positions excluding the following: production Team Member, team leader, entry level support staff Team Member, management Team Member and above.

A manager may fill a vacancy internally within his/her section and within the same salary classification without posting the position by realigning a Team Member into the position. The position vacated will then be posted.

All full-time Team Members who have completed the probationary period at HMMA are eligible to apply for vacancies posted under this policy. In the interest of stability and continuity, a Team Member who accepts a promotion will be expected to remain in the new position for a period of twenty-four (24) months and will be prohibited from applying for another promotional opportunity during that twenty-four (24) month period.

A Team Member will be disqualified from consideration for any Career Opportunity Posting if he/she has active corrective actions at the Formal Discussion level or above. Any conflict with the Employment of Relatives Policy may also prohibit a Team Member from being considered eligible for the posted position.

Vacancies to be filled by the Career Opportunity Program will be announced via closed circuit television and/or on the Career Opportunity Bulletin Boards. Vacancies will remain posted for five (5) working days following the first date of the announcement.

All Team Members who have filed a Career Opportunity Application but do not meet the minimum eligibility requirements will be notified in writing by the Employment Department. Candidates may be contacted for a screening interview to verify and/or clarify experience. Applicants not selected will be notified of their status, in writing, by the Employment Department.

A Team Member who has been awarded job advancement will be transferred within thirty (30) days of the selection decision. The Director of Human Resources must authorize any decision to delay the transfer.

TRANSFERS

HMMA wants all of its Team Members to become multi-talented. In order to achieve this goal HMMA Team Members will have the ability to

request an assignment to another work area of their choice. Not only does this allow the Team Members to gain important job experience but it also helps HMMA to develop Team Members for other responsibilities.

Team Members with permanent medical restrictions, either off work or on a temporary work assignment, will be considered for placement, with or without accommodation, as required by the Americans with Disabilities Act. Placements of Team Members with permanent medical restrictions will take priority over transfer requests.

When a vacancy is declared, it shall be posted for department or group transfer, provided the position cannot be filled by a Team Member with permanent medical restrictions. This vacancy will be posted plant wide denoting the department and group. The requesting eligible Team Member with the longest length of HMMA service shall be placed in the open position. The job posting will be posted in designated areas of the facility for a period of three (3) working days, excluding weekends and holidays. All requests received by the end of the posting period shall be reviewed to determine which candidate has the longest length of service and is eligible for transfer.

The requesting Team Member must be a full-time, non-probationary Team Member with at least 12 months of HMMA service as of the date of the posting. The Team Member requesting transfer must not have transferred within the last twelve (24) months.

Any corrective action at the Commitment Discussion level or above will result in the denial of a Team Member's transfer request or promotional request. When two or more Team Members have identical length of service dates, the Team Member identification number will be used as the tie breaker. The Team Member with the lowest Team Member identification number will be awarded the transfer. Team Members will not be considered for any transfer that would result in conflict with the HMMA Employment of Relatives Policy.

To assure that adequate skill levels are maintained in each department, all transfer requests will be evaluated based on operational viability.

Any Team Member who submits and is awarded a transfer request must accept the transfer. The Team Member who receives a transfer shall be prohibited from another transfer for a period of twenty-four (24) calendar months. This period shall begin as of the actual date the award of transfer notification is given. A Team Member who transfers will be required to reschedule vacation time previously approved. A Team Member who transfers to a new department will assume high overtime hours on that team for overtime equalization purposes.

SOLICITATION, DISTRIBUTION, & POSTINGS

HMMA prohibits the solicitation, distribution and posting of materials on or at HMMA property by any Team Member or non-HMMA Team Members, except as may be permitted by this policy. The sole excep-

tions to this policy are charitable and community activities supported by HMMA and HMMA-sponsored programs related to HMMA products and services.

Non-HMMA Team Members may not solicit Team Members or distribute literature of any kind on HMMA premises at any time. Team Members may only admit non-HMMA Team Members to work areas with HMMA approval or as part of a HMMA-sponsored program. These visits should not disrupt workflow. The HMMA Team Member must accompany the non-HMMA Team Member at all times. Former Team Members are not permitted onto HMMA property except for official company business. Team Members may not solicit other Team Members during work times, except in connection with a HMMA-approved or sponsored event. Team Members may not distribute literature of any kind during work times, or in any work area at any time, except in connection with a HMMA-sponsored event.

The posting of materials or electronic announcements are permitted with approval from the Director of Human Resources. All team communication boards located in team areas are intended for team related instruction and production-related materials only. Violations of this policy should be reported to the Director of Human Resources.

TEAM MEMBER WORK CONDUCT

It is the policy of HMMA that Team Members maintain a working environment that encourages mutual respect, maintains fellow Team Members dignity, promotes civil and congenial relationships among Team Members and is free from all forms of harassment and violence.

Team Members are expected to conduct themselves in an appropriate manner as judged by a reasonable person at work, at all HMMA functions, and also in the community. Team Members have the right to conduct their work without disorderly or undue interference from other Team Members. HMMA prohibits Team Members from violating the rights of their co-workers.

HMMA encourages a congenial work environment of dignity and respect as well as professionalism. Therefore, HMMA prohibits Team Members from intentionally harming or threatening to harm other Team Members, clients, vendors, visitors or property belonging to any of these parties.

Team Members are responsible for maintaining their work area in a neat and professional manner.

Team Members are responsible for assuring the security of HMMA confidential/proprietary material in their possession and similarly maintaining the security of HMMA provided equipment. Team Members concerned for the security of their work area or equipment must inform their supervisor of such concerns.

HMMA reserves the right to search locked, unlocked and/or publicly

used HMMA property at any time without consent. HMMA may require a search of personal property at the worksite or locked HMMA property assigned to an individual if there is reasonable suspicion that evidence of illegal or prohibited activities resides therein. Refusal of such a request may result in corrective action up to and including termination.

CORRECTIVE ACTION

The intent of corrective action is to provide a consistent way to address unacceptable attendance, performance, or conduct. Corrective action is designed to allow Team Members formal notice and the opportunity to correct any performance deviations from HMMA's acceptable standards.

The following corrective action procedures will be taken by HMMA's management in order to address a Team Member's inability to meet HMMA's standards regarding attendance, performance, or conduct. Corrective action applies to exempt Team Members at the specialist level and below, non-exempt administrative Team Members and all production Team Members, including maintenance Team Members. A team relations representative will be available and must attend each phase of the corrective action procedure. The steps are as follows:

Discussion Planner

Once it has come to the group leader and/or manager's attention that a Team Member's performance does not meet HMMA's performance standards, the group leader and/or manager will meet with the Team Member. This discussion is designed to gather facts about the performance issue and is to be a two-way conversation. The group leader and/or manager is to explore whether the performance issue is failure in the process, equipment, or with the Team Member.

- **Equipment Problem.** The group leader and/or manager will investigate and seek help in resolving any equipment problems.
- **Process Problem.** The group leader and/or manager will investigate and seek help in resolving any process problems.
- **Team Member's Performance.** Inform the Team Member of performance expectations and explain potential ramifications if the poor performance continues.

Informal Discussion -- Phase I

Phase I of corrective action is to address minor performance problems. The intent of Phase I is to bring the performance problem to the Team Member's attention through an Informal Discussion. The group leader and/or manager is responsible for conducting the Informal Discussion. The team relations representative will attend the Informal Discussion and serve as a witness. The Informal Discussion is an open discussion between the Team Member and the group leader and/or manager that identifies the nature of the problem and the possible solution.

If the performance problem is corrected and no additional problems develop during the following twelve months, the documented Informal Discussion will be removed from the Team Member's file and will not be used for any future corrective action.

Formal Discussion – Phase II

The Formal Discussion is the 2nd phase of corrective action and is to be used for more serious performance issues, or if a Team Member fails to correct an existing performance issue after receiving an Informal Discussion, or if it is decided that a Team Member's performance issue is serious enough that it warrants a higher phase of corrective action. The Team Member will be given a Formal Discussion letter. Attendees at the Formal Discussion phase are the group leader and/or a member of management, team relations representative and the Team Member. The group leader and/or production management Team Member will prepare a Formal Discussion document addressed to the Team Member summarizing the performance issue. If the performance issue is corrected and no additional performance issues arise during the following twelve (12) months, the Formal Discussion letter will be removed from the Team Member's file and will not be used for any future corrective action.

Commitment Discussion – Phase III

The Commitment Discussion is the 3rd phase of corrective action. This phase will be used if a Team Member's performance continues to be unacceptable or the Team Member commits a serious action that requires a higher level of corrective action.

A Commitment Discussion is a formal meeting, which is conducted with the affected Team Member; his/her group leader and/or manager, team relations representative, the team relations manager, and the appropriate production management Team Member. The purpose of this phase of corrective action will be to determine what aspects of the Team Member's performance are unacceptable, why they are unacceptable, and the reasons behind the Team Member's performance problem. The Team Member will be required to write an action plan stating what actions he or she will take to resolve the performance problem.

The Commitment Discussion letter and the Team Member's commitment letter will remain in the Team Member's personnel file for a period of 24 months. If the Team Member is able to correct the performance problem and no additional problems develop, the Commitment Discussion letter and the Team Member's action letter will be removed from the Team Member's personnel file and will not be used for any future corrective action.

Decision Leave – Phase IV

The Decision Leave is the 4th phase of corrective action. This phase may be taken if the Team Member fails to correct the performance problem after the Commitment Discussion or if it is determined that the Team Member's performance is serious enough to warrant action beyond a

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Commitment Discussion.

The affected Team Member will meet with his/her group leader and/or manager, team relations representative, team relations manager and the appropriate production management Team Member for a formal meeting. The Team Member will be given the following day off with pay. The Team Member will be asked to use this time to make a final decision whether or not he/she wants to remain employed by HMMA.

If the Team Member decides to return to work and commit to correcting his/her performance, the day off will be excused with pay.

Information regarding a decision leave will remain in the Team Member's personnel file for a period of twenty-four (24) months. If the Team Member is able to correct the performance problem, and no additional performance problems develop, it will be removed from the Team Member's personnel file and will not be used for any future corrective action.

Corrective action will be administered sequentially with regard to all attendance performance situations. Specific performance-related issues regarding performance, quality, and conduct will be evaluated on a case-by-case basis, and corrective action may be applied based on the severity of the performance issue. Any Team Member whose employment is terminated by HMMA may be entitled to request a Peer Review Panel Hearing.

Termination

HMMA and its Team Members have a mutual interest in maintaining job security and stability in our organization. Because of our mutual interest, HMMA and its management team hope that we never have to terminate a Team Member's employment. However, in situations where a Team Member refuses to respond to the steps in the "Corrective Action Program" outlined above, or if a Team Member's actions are such that HMMA feels his/her employment cannot be continued, the Team Member will be terminated. Every termination decision will be reviewed by the team relations manager, the Team Member's manager, and the Director of Human Resources to review all facts and information before a termination decision is made.

Notwithstanding anything to the contrary contained in this handbook, every Team Member's employment with HMMA is voluntary and is subject to termination by you or HMMA at will, with or without cause, and with or without notice, at any time. Nothing in this handbook or HMMA policies or procedures shall be interpreted to be in conflict with or to eliminate or modify in any way the employment-at-will status of HMMA.

SERIOUS MISCONDUCT

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HMMA requires a high degree of personal integrity from its Team Members. There are certain things a person can do that by nature are so serious that they place him/her outside of the "Corrective Action Policy." When a person commits one of those actions against HMMA and/or his/her fellow Team Members, he/she may be terminated from employment immediately.

In serious misconduct cases where it is determined that termination is not appropriate, the Team Member will receive a Letter of Conditional Employment which will remain in the Team Member's file for 36 months. Upon issuance of a letter of conditional employment, the affected Team Member, group leader, team relations representative, team relations manager and the appropriate management Team Member will have a formal meeting. Following this meeting, the Team Member will develop an action plan and make a written commitment to successfully implement that plan.

Listed below are some examples of activities that constitute serious misconduct at HMMA:

- Serious and/or excessive violations of HMMA's attendance program.
- Serious and/or excessive violations of HMMA's performance standards. *QAS 11-27-07*
- Threatening or fighting on HMMA's premises, at HMMA sponsored functions, or while conducting business away from the plant.
- Disclosing, misusing or removing from the premises any HMMA or fellow Team Member's property unless authorized.

- Use, possession, sale, transfer of or being under the influence of illegal drugs, alcohol or any other intoxicating substance at any time on HMMA property. Gifts of alcohol and/or coolers containing alcohol are also prohibited at HMMA. Deliberate damage to HMMA property or the property of a fellow Team Member.

- Intentionally misrepresenting or falsifying any information concerning employment or any report or HMMA record.
- Engaging in any form of discrimination in the workplace, including racial or sexual harassment of a fellow Team Member or harassment by a person in a supervisory position of a Team Member under the supervisor's authority.

- Insubordination, including refusing to perform a work assignment or refusing to follow direction of HMMA security or safety personnel. *QAS 11-27-07*

- Deliberately trying to conceal serious quality problems in HMMA products.

- Deliberately using unsafe work practices that might seriously jeopardize the health or safety of the Team Member or a fellow Team Member. *QAS 11-27-07*

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- Use, possession, sale or transfer of a weapon at any time on HMMA property.
- Engaging in illegal activities such as gambling or trafficking stolen goods.

- Deliberately violating HMMA's Solicitation and Distribution Policy. *QAS*

- Deliberately spreading false or malicious rumors or slandering or libeling a fellow Team Member, HMMA or an HMMA product.

- Leaving the plant without proper authorization (note: this is also considered a voluntary resignation).

- Chronic violations of HMMA's Safety Rules or Procedures.
- Willful violations of HMMA's Lockout/Tag out, Confined Space Procedures or other situations where the violation places the Team Member or others in immediate danger.

The aforementioned list is not all inclusive.

WORKPLACE THREATS AND VIOLENCE

This policy applies to any Team Member and/or person that make substantial threats, exhibits threatening behavior, or engages in violent acts on HMMA property or makes threats, exhibits threatening behavior, or engages in violent acts relating directly or indirectly to any work activities.

Threats, threatening behavior, or acts of violence against Team Members, vendors, contractors, visitors, or other individuals by anyone on HMMA property will not be tolerated (zero tolerance).

Threats, threatening behavior, or acts of violence against Team Members, vendors, contractors, visitors or other individuals relating directly or indirectly to work activities including phone calls, written materials, behavior at HMMA-sponsored activities will not be tolerated. Firearms, ammunition, knives, bows or any other types of weapons are not permitted on HMMA property which includes the parking area(s).

In the event that violations of this policy are substantiated, HMMA will initiate a decisive and appropriate response. This response may include, but is not limited to: suspension or termination of any business relationship, reassignment of job duties, suspension or termination of employment, and/or seeking arrest and prosecution of the person or persons involved. Any violation of this policy will be considered serious misconduct. Any Team Member terminated pursuant to violations of this policy shall not be subject to the Team Member Review Board process.

Any Team Member that has knowledge of or witnesses threats, threatening behavior or an actual incident or violations of this policy is required to report the information to his/her immediate supervisor and/or the manager of security and/or his/her Team Member relations representative.

TEAM MEMBER RESOLUTION PROGRAM AND

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PROCEDURE

In any organization there can be differences of opinion about working conditions, work rules and policies, and other work-related issues. To resolve these differences effectively, communication is essential. This program is designed to enhance communication by providing a formal process to resolve legitimate disputes. HMMA will provide a prompt, orderly means of receiving and responding to Team Members' concerns. This program and procedure is intended to supplement, rather than discourage or replace, informal discussions between supervisors and Team Members. A supervisor should make every reasonable effort to resolve Team Members' concerns outside the formal Team Member Resolution Procedure.

The Team Member Resolution Program and Procedure is available to all full-time Team Members who have successfully completed their probation period. The Team Member Resolution Program and Procedure is not available to individuals employed in a temporary status or to employees of any contracted services provided to HMMA. The initiation of the Team Member Resolution Procedure in good faith by Team Members shall not adversely affect their standing as Team Members.

The Team Member Resolution Program consists of four steps, which are outlined below.

Outside counsel will not be permitted to attend any of the meetings. However, appropriate witnesses may be permitted to attend with approval from the manager of team relations.

Step 1: Supervisory Level

Team Member's Role

The Team Member should contact the team relations representative to coordinate a meeting in order for the Team Member to verbally present the concern to his/her supervisor within five (5) working days of the original cause for the appeal, or from the date the Team Member learned the cause for the appeal.

Supervisor's Role

The supervisor will meet with the Team Member and the team relations representative and respond verbally to the concerned Team Member within five (5) working days.

Step 2: Resolution Request

Team Member's Role

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If a Team Member does not agree with the supervisor's verbal response, he/she should contact a team relations representative for a Resolution Request Form. The team relations representative will give the Team Member the form and assist the Team Member in filing the form if necessary. The team relations representative will forward the Resolution Request form to the Team Member's section manager and coordinate within five (5) working days of receiving the answer to Step 1. The team relations representative will attend the meeting.

Section Manager's Role

The section manager will review and investigate the facts of the appeal with the assistance of the team relations representative. The department manager will then conduct the prearranged meeting with the Team Member and the team relations representative.

Regardless of the outcome of the meeting, the department manager will provide the Team Member with a written response, briefly outlining the decision. This response will be delivered to the Team Member no later than five (5) working days following the meeting.

Step 3: Resolution Appeal

Team Member's Role

If a Team Member does not agree with the department manager's response, he/she should contact a team relations representative. The Team Member must make a written request stating he/she does not agree with the department manager's response and request to go to the next step. The team relations representative will forward the request to the team relations manager and coordinate a meeting within five (5) working days of receiving the answer to Step 2. The team relations representative will attend the meeting.

Manager of Team Relations Role

The team relations manager will review and investigate the facts of the appeal with the assistance of the team relations representative. The manager of team relations will then conduct the prearranged meeting with the Team Member and the team relations representative.

Regardless of the outcome of the meeting, the manager of team relations will provide the Team Member with a written response, briefly outlining the decision. This response will be delivered to the Team Member no later than five (5) working days following the meeting.

Step 4: Resolution Final Appeal

The Resolution Final Appeal is the last step of the process. The committee's written response is the final decision and cannot be appealed. The committee cannot change or alter any approved policy.

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Team Member's Role

If the Team Member is not satisfied with the decision of the team relations manager, he/she will give written notice, within five (5) working days of receipt of the Step 3 written response, to the team relations representative stating his/her wish to initiate the final step of the Resolution Appeal Process.

Top Management's Role

The manager of team relations will coordinate and facilitate a meeting consisting of three of HMMMA's top management within 10 days of the request. HMMMA's top management representatives will meet with the Team Member and allow the Team Member to present his/her facts to the final appeal committee.

The committee may ask questions and/or speak to any witnesses as they feel may be necessary to reach a final decision. The Team Member filing will be notified of the committee's final decision in writing within 5 business days of the resolution meeting.

A Team Member may withdraw an appeal at any time. Once withdrawn, however, it may not be reinstated. If the Team Member does not meet the time constraints outlined in this policy, Team Member Resolution request decisions will remain as defined by prior actions.

The procedure as outlined describes the normal course in which resolution requests are resolved. Team Members should note that the Team Relations Department is available to provide Team Member consultation on a problem and any other assistance at any time prior to or during the Team Member Resolution Procedure.

Team Members cannot file a Team Member Resolution Request against a policy they feel is unfair. However, a Team Member may file a Team Member Resolution Request regarding a policy that is not implemented properly.

TEAM MEMBER REVIEW BOARD

The Team Member Review Board is to allow those Team Members who feel they have been wrongfully terminated to request a review of that termination by a random selection of trained and qualified fellow Team Members. Any Team Member terminated for any reason except for violations of HMMMA's policy on workplace threats and violence, drugs and alcohol, and the anti-harassment policy will have the right to appeal the termination to a Team Member Review Board.

DRUGS, ALCOHOL AND WEAPONS PROHIBITED

HMMMA is committed to maintaining a drug, alcohol and weapon free workplace for all Team Members in order to ensure the safety of all those working at our facility and at all HMMMA sponsored events. The illegal

use, sale or possession of narcotics or illegal drugs, alcohol or controlled substances while on the job or on HMMMA property (which includes parking areas) is prohibited and is a dischargeable offense. Any illegal substance will be turned over to the appropriate law enforcement agency and criminal prosecution may result. HMMMA also considers off-the-job illegal drug use as proper cause for disciplinary action up to and including termination of employment.

Any Team Member convicted of driving under the influence which results in the suspension or revocation of his/her driving privileges and who, in the course of his/her job duties, is required to operate a motorized vehicle, including fork lifts, must notify the manager of the department. The suspension or revocation of a driver license will result in a job reassignment either temporarily or permanently. Any job reassignment will be to an open position only.

HMMMA's business involves manufacturing, use of powered equipment, engineering, procurement, and project management. Therefore, the safety of our Team Members and facilities, as well as the safety of the general public and our ability to fulfill our obligations under the Drug-Free Work Place Act of 1988, are of paramount concern.

While HMMMA has no intention of intruding into the private lives of its Team Members, HMMMA does expect Team Members to report for work in a condition that allows them to perform their duties without jeopardizing their own safety or the safety of other Team Members. HMMMA recognizes that Team Members' off-the-job, as well as on-the-job, involvement with drugs and/or alcohol can have an impact on the workplace and on our ability to accomplish our goal of a drug and alcohol-free work environment.

HMMMA will take steps to prevent and discourage the use, possession, sale, or distribution of stated contraband at any time by any HMMMA Team Members or contracted vendors. In accordance with this policy, periodic searches, random or annual urinalysis, drug screening or blood testing may be conducted. Such searches and testing will be performed by HMMMA using qualified contracted agents or qualified management Team Members.

Any Team Member who is taking medication prescribed by a physician must be able to provide a record of the prescription, including the name of the medication, the prescribing physician's name, and any limitations the prescription may place on the Team Member's ability to perform assigned duties. Furthermore, Team Members taking prescription or non-prescription medication are responsible for being aware of any potential effect such drugs may have on their reactions, judgment, or ability to perform their duties, and if impairment is possible, to report such use to their group leader/manager or HMMMA's medical clinic prior to reporting to work.

Any refusal by a Team Member to submit to a search or testing procedure may, however, constitute grounds for termination. The primary

purpose of this policy is to promote the safety and well-being of all Team Members. It would be inconsistent to promote a strong safety effort while allowing the use of drugs and alcohol or the possession of drugs, alcohol and/or weapons on HMMA property to undermine the safe and effective performance of Team Members on the job.

Each applicant for employment will be required, as a condition of employment, to undergo a urine drug screen/hair analysis. Applicants will be asked to read the policy and sign the post offer employment offer and Team Member consent to alcohol and drug screening. If an applicant tests positive and is determined to be in violation of this policy, applicant will be ineligible for employment.

FOR CAUSE TESTING AND RANDOM TESTING

Each Team Member, as a condition of continued employment, is subject to medical or physical examination or tests, including urine drug screen and/or a drug screen using hair, at the determination of the responsible group leader, department manager and concurrence of the HMMA team relations manager and/or his/her designee, providing the following conditions are met:

- If the Team Member's group leader and/or manager has reasonable cause to suspect that the Team Member is in violation of this policy; or
- If the Team Member's job performance is deficient in a manner which suggests a possible violation of this policy; or
- If the position is designated as a safety sensitive and/or high risk occupation; or
- If the Team Member is selected at random for testing in order to monitor and ensure compliance by all Team Members with this policy. The random selection will be done centrally by HMMA's medical facility. Team Members will be asked to sign the Pre-Employment Offer and Team Member Consent to Alcohol and Drug Screening form.

If a Team Member tests positive for a random and/or for-cause testing and is determined to be in violation of this policy, the Team Member will be required to:

- attend a substance abuse program
- follow the attending physician and/or a qualified substance abuse counselor's guidance
- agree to random testing over the next 12 months
- supply HMMA's medical clinic with documentation of treatment and/or documentation that no further treatment is necessary
- agree to remain substance free as a condition of employment
- be responsible for any cost incurred that is not covered by HMMA's medical plan for treatment
- voluntarily resign if the Team Member subsequently tests

positive for any subsequent illegal or un-prescribed substance and or being under the influence of alcohol.

Any adulterated specimen will be viewed as falsification and will result in immediate termination.

Any Team Member requesting rehabilitation assistance will be referred to the Team Member Assistance Program (TMAP) provider for assessment and treatment recommendations. The TMAP provider will monitor the program and advise HMMA of the Team Member's progress. Should the Team Member fail to maintain satisfactory progress or discontinue the program, the Team Member will be subject to termination.

Any Team Member who refuses to submit to drug testing will be considered to be insubordinate and will be terminated. Additionally, if a Team Member refuses to submit to or cooperate with a post-accident blood or urine test, he/she may forfeit his/her right to recover workers' compensation benefits.

HMMA recognizes that drug abuse and/or dependency are medical/behavioral conditions that can be successfully treated. Team Members with drug problems are encouraged to request assistance from the Team Member Assistance Program. Participation in TMAP is totally voluntary and completely confidential; however, a request for assistance or participation in a TMAP does not excuse a Team Member from violation of this policy.

HMMA reserves the right to conduct unannounced searches of its property, vehicles, and facilities, including Team Member's vehicles, work areas, desks and lockers assigned to Team Members, at any time. No Team Member has the right to interfere with or object to such searches of HMMA property based on expectations of privacy or otherwise. HMMA reserves the right to search personal property belonging to its Team Members, such as, but not limited to, lunch boxes or bags, pocketbooks or briefcases if such property is brought onto HMMA premises or into HMMA vehicles.

All Team Members will be required to sign a statement acknowledging their understanding of and compliance with HMMA policy.

PUBLIC RELATIONS

To ensure that all information given to the public and the media is consistent, beneficial and accurate, it is important that the Public Relations Department coordinates and controls all information going out externally. If you are contacted by the news media and asked for information about HMMA or if you are asked to comment about HMMA, you are to refer the interviewer to the Public Relations Department. You may not release any information about HMMA business or activities unless you have been specifically authorized by the Public Relations Department.

INTERNAL COMMUNICATIONS

Communication at HMMA is a key factor to our success. In order to maintain good communications, HMMA has established various avenues of communicating information to the Team Members. Additionally, and just as important, are the avenues that have been created to allow you, the Team Member, to communicate to HMMA. It is important to keep the avenues of communication open. By communicating we can all be successful. Even though we have many avenues for communication at HMMA all Team Members are encouraged to communicate with their group leaders and managers. Some of those methods are:

Open-Door Policy

HMMA believes that each Team Member should have the ability to address problems as they arise personally. As with all companies, misunderstandings, differences of opinions and disagreements occur. If issues and concerns are not addressed in a timely manner those issues of concern can damage your relationships and affect all the parties involved. HMMA wants, and encourages all Team Members to openly communicate with one another to resolve misunderstandings, differences of opinion and disagreements. One way that we can resolve these issues is by having open communications with one another and the ability to discuss issues and concerns openly.

Unfortunately, there may be times when an agreement cannot be reached. In these situations HMMA wants every Team Member to know that through the Open-Door Policy they can address these issues in order to achieve a fair and practical solution.

Any member of the team relations department will assist you should a concern or issue were to arise.

Again, HMMA encourages all Team Members to discuss the situation in a respectful manner with the party involved. If a resolution is not reached, discuss the situation with the next level of management. The Open-Door Policy is meant to be used in a systematic fashion and may be pursued to the top levels of HMMA's management.

Bulletin Board

HMMA has bulletin boards at all entrances and exits. These bulletin boards are for communicating work related information, information required by law, and job postings. Additionally, each team will have a bulletin board; these boards are for work related communications only. Team Members are prohibited from posting any information or notices directly on any bulletin board at HMMA.

President's Roundtables

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The President's Roundtables provide HMMA's Team Members an opportunity to meet and talk with HMMA's President as well as our Vice Presidents. Team Members will be selected randomly on a bi-monthly basis and sent invitations to attend the meetings. Participation is voluntary; however each Team Member is encouraged to attend so that they can communicate directly with the President.

Group Leader/Managers One-on-Ones

Each group leader/manager will meet with each Team Member twice a year. In a company the size of HMMA it is difficult at times for the two to get together and have a casual conversation. HMMA feels that developing these relationships is important and helps foster open communication. These meetings will be held away from the production work areas and are meant to be an opportunity for the Team Member and group leader/manager to have a 15 minute casual conversation.

Manager Lunches

The managers lunches are another opportunity for a team to get together in a casual setting where the manager/assistant manager of the department meets with each team in their department every six months and provides lunch. Participation is voluntary. The purpose of these meetings is to continue to foster open communication, and promote a team spirit as well as a feeling of family within the department. The meeting is held during the normal lunch period and is unpaid time.

Team Advisor

The Team Advisor is a bulletin that will be issued to the team to communicate important information to the teams. The Team Advisor will be issued on an as needed basis to each team leader so they can read the information during the Five Minute Communication meeting. Once the bulletin has been read it will be posted for a specified time in order to allow Team Members to read it at their leisure.

Hyundai Communication System (HCS) 334-387-8008

HMMA has established the HCS in order to allow Team Members an opportunity to ask questions in the event their group leader, team relations representative or another member of management has been unable to answer your question or concern. This means of communication is done anonymously, by calling the HCS. The HCS does not record the extension or phone number from which the call came. HMMA encourages Team Members to talk with their managers first, but in the event you need to ask a question, make a comment, or voice a concern on a confidential basis, we also encourage you to call the HCS.

The HCS will be available 24 hours a day, seven days a week. Your call will be directed to the Director of Human Resources and or his designee.

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The Director of Human Resources will review the question a. . comment and direct them to the most qualified person. If you leave your name and want a personal response, a meeting will be scheduled if you request one. Every effort will be made to make sure all replies are given within ten working days of receiving the call.

Anonymous calls will be posted with the answers on the HCS boards for a period of five days. We also ask everyone to be patient. Some calls may contain complex issues that require more time in order to answer them accurately.

HMMA Closed Circuit Television System (CCTV)

HMMA CCTV System is an internal video system that will be used to broadcast HMMA information to all Team Members daily.

HMMA Weekly News

HMMA Weekly News is a weekly summary of company-related information. The HMMA Weekly News will be distributed every Monday on a weekly basis.

HYUNDAI Insights

Hyundai Insights is a newsletter that will be sent to the Team Members home on a biweekly basis. This news letter will keep you and your family informed about what is going on at HMMA as well as what is going on at HMC and HMA.

Five Minute Communication Meetings

Each team will have a five minute communication meeting at the start of each shift. The purpose of this meeting is to provide the Team Members with information pertaining to production, quality, or safety. These meetings may also be used to discuss sales, benefits, policy updates, or other pertinent information the team may need to know. All Team Members must be in their assigned meeting area ready for work at the start of their shift.

COMMUNITY RELATIONS

Speeches

HMMA receives many requests for speeches about our company from a variety of groups. If your organization is not-for-profit and would like a representative from HMMA to speak to a group, you or your organization needs to submit in writing the following information: All requests must be on the group's letterhead.

- Requested date of speech
- Time
- Location
- Name of Group

- Topic you would like covered
- Background information on the organization
- Person to contact with their phone number or email address

All requests must be turned in at least one month prior to the requested date for the speech and should be addressed to the manager of public relations.

Tours

All family and public tours must be scheduled through the Public Relations Department.

GENERAL INFORMATION

Electronic Devices

HMMA has a responsibility to protect every Team Member as well as to protect HMMA assets. The automotive industry is a very competitive industry, and in order to protect its Team Members and proprietary information, HMMA must control what types of electronic devices are allowed in the workplace.

In order to ensure the health and safety of all Team Members, personal radios, televisions, tape recorders, and tape/CD/mp3 players are not permitted anywhere in the facility.

Camera/Video Camera

In situations where a department uses a camera/video camera in order to conduct investigations, the department must have approval by the Security Department and must have a camera/video camera pass attached to the camera/video camera at all times. If a supplier has a need that requires the use of a camera/video camera in order to conduct an investigation or to assist in the function of their job duties, he/she must gain written approval from the responsible department. The written approval must be submitted to the Security Department for approval and verification from the responsible department. Once the Security Department has approved the use of a camera/video camera, Security personnel will issue a temporary camera/video camera pass. The camera/video camera pass must be attached to the camera/video camera.

Any camera/video camera without a camera/video camera pass will be confiscated, held in security and returned to the owner as they exit HMMA's premises, minus its film.

Personal camera/video cameras and camera/video phones are not permitted within the plant, nor will pictures be allowed during general tours. Business situations may require photos to be taken in the plant, but when these situations occur, only Team Members with an approved camera/video camera pass using a HMMA-owned camera/video camera will be

allowed to do so.

Cell Phones/Pagers

HMMA reserves the right to issue cell phones and/or pagers for business reasons to those individuals that have been approved in order to conduct HMMA business matters.

Personal cell phones and pagers will be allowed in the facility. However, cell phones and pagers must be kept in the Team Member's locker or desk during work times. In addition, the devices must have the volume muted while being stored. Team Members may use their cell phones and/or pagers during breaks and lunch periods only, and the Team Member must be in a designated break area.

Audio Tape Recorders

Audio tape recorders are prohibited on HMMA premises. In situations where an audio tape recorder is needed a request for approval must be submitted to and approved by the Director of Human Resources or his/her designee.

Any violation of the aforementioned could result in corrective action up to and including termination. Any violation by a non-HMMA Team Member could result in their being asked to leave the premises and the film, tape, disk, and/or any other type of device capable of storing audio or video information will be confiscated and/or memory erased.

HMMA TOOLS

HMMA has supplied each Team Member with the tools as well as state of the art equipment needed to perform their daily job functions. Each Team Member is responsible for the care and upkeep, and inventory of tools and other equipment issued by HMMA. These tools and equipment are not to be removed from the appropriate HMMA work area. Personal tools must not be brought into HMMA.

Intentional damage to any HMMA tooling or equipment is subject to corrective action up to and including termination.

LOCKERS

HMMA will provide each Team Member with a locker so that they may store personal items. However, these lockers should not be used to store money or valuables. HMMA will not be responsible for anything that is destroyed, lost or stolen from any locker.

Lockers will remain the property of HMMA at all times. HMMA maintains the right to inspect any locker and its contents at any time with or without notice if it is believed the locker (s) contain items contrary to HMMA policy. This includes but is not limited to items such as firearms, explosives, dangerous or lethal weapons, alcohol, illegal drugs, or missing HMMA property.

CAFETERIA

HMMA provides two dining facilities for our Team Member's convenience. HMMA has designed each of our dining facilities so that you can experience a clean and pleasant area while dining. Prepared meals will be served daily. However if you choose to bring your own meal our dining facilities have ample seating for everyone. Team Members will also find vending machines located throughout the facility if you wish to purchase food or drink.

SMOKING

In an effort to provide safe and comfortable work conditions, HMMA prohibits smoking and/or the use of smokeless tobacco products in all production facilities and administrative areas. Team Members who use tobacco products should respect all areas designated as "no smoking," limit their tobacco use to those areas where and when smoking is permitted (outside of the facility and only during breaks and dinner/lunch), and dispose of all smoking materials/smokeless tobacco products in proper containers.

Smoking or the use of smokeless tobacco is only permitted during non-work times. This is outlined as follows: one 10-minute paid rest period in the first half of the shift, one 10-minute paid rest period in the second half of the shift and during the unpaid lunch period. In case of overtime work, an additional 5-minute rest period for each full hour (60 minutes) of overtime can be taken. There are some jobs where there are no set scheduled break times, such as maintenance, administration, etc. It is understood that these Team Members still fall with the guidelines of taking only a 10-minute break in the first half of the shift, and a 10-minute break in the second half of the shift.

HMMA intends to consistently enforce the smoke free environment policy described in this document. Any HMMA Team Member violating this policy is subject to corrective action up to and including termination.

TELEPHONE CALLS

All HMMA phones are for business purposes only. Team Members are not allowed to use HMMA phones for personal business. However, if an emergency situation should arise, the Team Member is to contact their group leader/manager and/or another member of management in order to use a HMMA phone.

All emergency phone calls into HMMA will be forwarded to the appropriate area. HMMA's Team Members and their families are very important and considered HMMA's extended family. Each Team Member should supply their family members with an emergency contact number for their work area, as well as the department they work in, the group leader/ manager's name, and make sure their family knows that the contact information is for emergencies only.

ACKNOWLEDGMENT

The information contained in the Team Member Handbook of Hyundai Motor Manufacturing Alabama, LLC has been prepared as an aid and a guideline to give you a summary of the benefits, policies, and procedures at HMMA. It contains information about what you can expect from HMMA, and in turn, what HMMA expects of you.

If, in this Handbook, we have inadvertently said or implied anything that is different from the actual provisions of any HMMA policy or benefit plan document, the actual provisions of the policy or benefit plan will govern.

If at any time you have any questions regarding policies, you may talk to your group leader, assistant manager, manager, or team relations representative.

The policies and statements contained in this Handbook, and in other provisions that may be added in the future, are not a contract of any kind, but are rather a description of company policies. Employment with HMMA is at will and is not offered, contracted, or promised for any specific length of time. You have the right at HMMA to quit for any reason or for no reason at any time. Conversely, HMMA may terminate your employment on the same basis. Although this Handbook reflects current policies, these policies may be unilaterally changed or rescinded by HMMA at any time.

I, _____, acknowledge that I have received the handbook and that it is my responsibility to read the handbook and ask questions if needed in order to gain understanding.

Signature _____

Number _____

Date _____

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GRANT OF LICENSE AND RELEASE OF 45

I acknowledge that while employed with HMMA, I may, either individually or in a group setting, be photographed, filmed, or videotaped from time to time, and I voluntarily agree to be photographed, filmed, and/or videotaped. I fully understand and agree that such photographs, films, or videotapes may be freely used for public display in any form of media for the purpose of furthering the business interests of Hyundai Motor Manufacturing Alabama, LLC, Hyundai Motor America, Inc., and/or Hyundai Motor Company through advertising, publicity, trade, or any lawful purpose whatsoever. I further acknowledge and agree that I shall not be entitled to, nor shall I demand, compensation for such use.

By signing below, I hereby grant to Hyundai Motor Manufacturing Alabama, LLC, Hyundai Motor America, Inc., and Hyundai Motor Company, and their respective subsidiaries and affiliated companies, associate agencies, successors, and assigns, and to such other persons as they may designate from time to time (collectively the "Company"), an unconditional, royalty free license giving them the absolute right and permission to use my name, image, and/or likeness in such photographs, film, videotape, or other medium for the purposes set forth above without any entitlement to compensation for such use. This license shall be of unlimited duration and shall survive the cessation of my employment with HMMA.

In consideration for allowing me to participate in any photo, film or video shoot, I, for myself, my heirs, executors, administrators, and assigns, and all those who might claim through me, hereby release and discharge the Company and its/their officers, employees, agents, and representatives, from any and all claims, demands, damages, loss, expenses, and liability (specifically including but not limited to claims for compensation, royalties, or fees for use of my name, image, or likeness), whether known or unknown or presently existing, formerly existing, and which may hereafter arise, as a direct or indirect result of the use of my name, image, or likeness.

TEAM MEMBER:

Signature	Date
Printed Name	Number

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DEES000065
Hyundai Motor Manufacturing Alabama, LLC.
700 Hyundai Boulevard
Montgomery, Alabama 36105

 HYUNDAI Hyundai Motor Manufacturing Alabama	TEAM RELATIONS MEMO	HR-AL-HR-TR-F-00002
Revision Date: 05/26/06	Owner: Team Relations	Revision Level: 02

TO: Rob Clevenger

FROM: William Ware

DATE: February 21, 2007

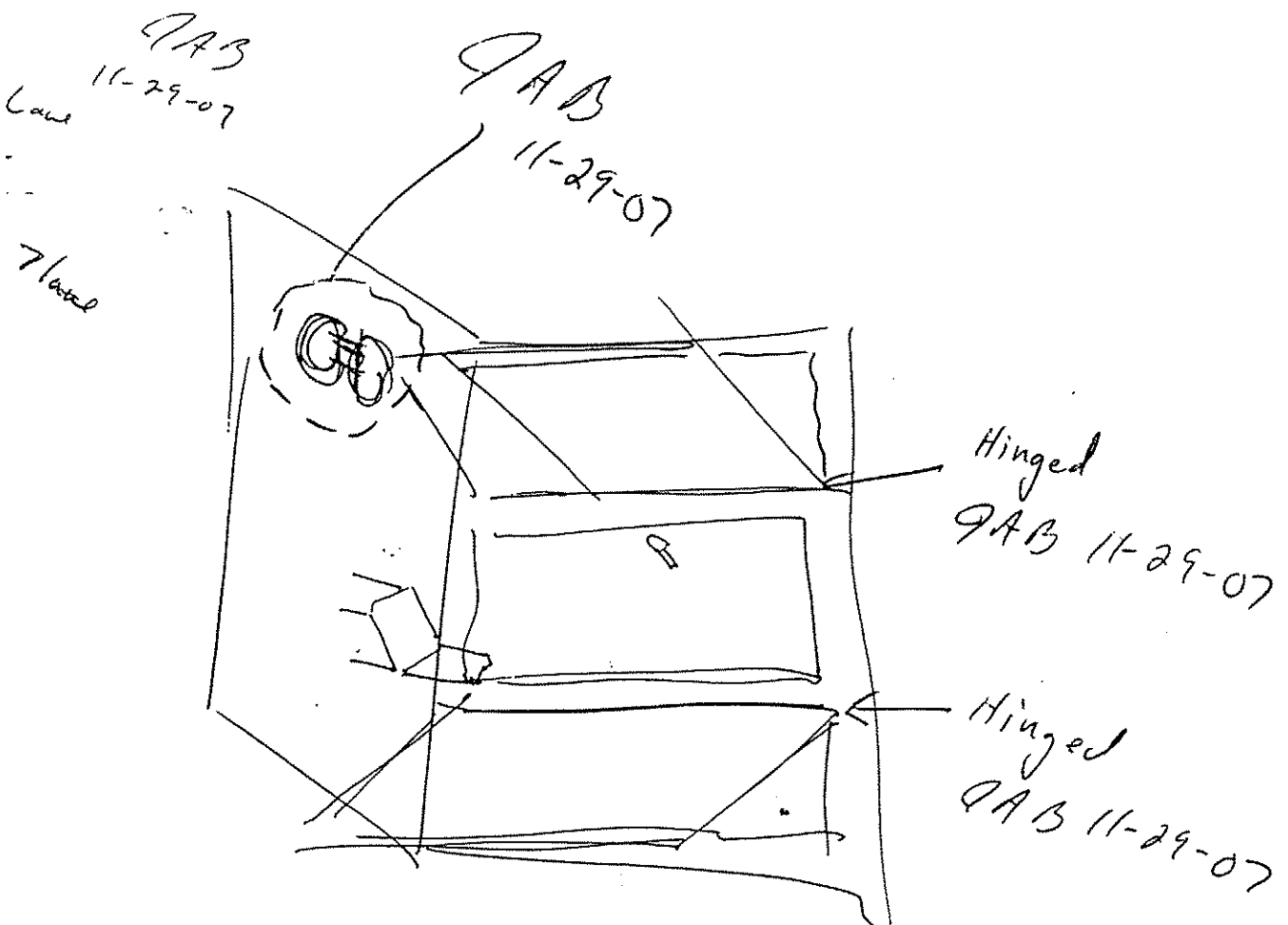
SUBJECT: Leon Dees

Interview with Leon Dees, William Ware, and Greg Prater

Greg began our talk with Leon by informing him that a member of management noticed him on the third floor asleep on the morning of February 8th. Leon responded, "I was not asleep, I know exactly who you are talking about, call Jim Brookshire in here and I will confront him right now." Greg calmed Leon down and explained that the reason why we had assembled into the room was so that we could get his side of the story. Leon stated that he was sitting in a chair text messaging his daughter due to the bad weather outside. His location was at the RO 1 station. Leon stated that this event took place around 10:30-11:30 pm. Leon also contends that Jim never approached him. In fact when asked what was the closest Jim came to him he replied about "55 feet." Leon made the following comment several times; he sat and watched Jim walk around on the third floor; however, he is to the point where he does not care about what people say. He went on to say that we complain over and over again but nothing happens, so I just don't care anymore. "If something breaks then I will fix it but I will not run the shop like I used to."

**PLAINTIFF'S
EXHIBIT**

16



JOHN WAYNE APPLGATE

1	IN THE UNITED STATES DISTRICT COURT	1	INDEX
2	FOR THE MIDDLE DISTRICT OF ALABAMA	2	EXAMINATION BY: PAGE NUMBER
3	NORTHERN DIVISION	3	Mr. Sport.....5-96
4	CASE NO.: 2:07cv00306-MHT-CSC	4	Mr. Johnson.....96-100
5		5	Mr. Sport.....100-107
6	JERRY LEON DEES, JR.,	6	
7	Plaintiff,	7	EXHIBITS:
8	V.	8	Plaintiff's Exhibit 17.....9
9	HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC and	9	(John Applegate's Personnel File)
10	HYUNDAI MOTOR AMERICA, INC.,	10	Plaintiff's Exhibit 18.....75
11	Defendants.	11	(Greg Prater's Personnel File)
12		12	Plaintiff's Exhibit 19.....76
13		13	(Greg Prater's Team Relations File)
14	STIPULATIONS	14	Plaintiff's Exhibit 20.....83
15		15	(Supplement to Greg Prater's Personnel
16		16	File)
17	IT IS STIPULATED AND AGREED by and	17	
18	between the parties, through their respective	18	
19	counsel, that the deposition of JOHN WAYNE	19	
20	APPLGATE may be taken before STACEY L. JOHNSON,	20	
21	Commissioner, at the Marriott Prattville at	21	
22	Capitol Hill, 2500 Legends Circle, Prattville,	22	
23	Alabama, on the 29th day of November, 2007.	23	
	1		3
1	IT IS FURTHER STIPULATED AND AGREED	1	APPEARANCES
2	that the signature to and the reading of the	2	FOR THE PLAINTIFF, JERRY LEON DEES, JR.:
3	deposition by the witness is hereby waived, the	3	KILBORN, ROEBUCK & McDONALD
4	deposition to have the same force and effect as	3	Jeffrey R. Sport
5	if full compliance had been had with all laws	4	(SPORJ5390)
6	and rules of Court relating to the taking of	4	jeff.sport@sportlaw.us
7	depositions.	5	
8	IT IS FURTHER STIPULATED AND AGREED	5	Vincent F. Kilborn, III
9	that it shall not be necessary for any	6	(KILBV4484)
10	objections to be made by counsel to any	6	1810 Old Government Street
11	questions except as to form or leading	7	Mobile, Alabama 36606
12	questions, and that counsel for the parties may	7	(251) 479-9010
13	make objections and assign grounds at the time	8	
14	of trial, or at the time said deposition is	9	FOR THE DEFENDANTS, HYUNDAI MOTOR MANUFACTURING
15	offered in evidence, or prior thereto.	10	ALABAMA, LLC and HYUNDAI MOTOR AMERICA, INC.:
16	IT IS FURTHER STIPULATED AND AGREED	11	OGLETREE, DEAKINS, NASH, SMOAK
17	that the notice of filing of the deposition by	11	& STEWART, P.C.
18	the Commissioner is waived.	12	Matthew K. Johnson
19		12	P. O. Box 2757
20		13	Greenville, South Carolina 29602
21		14	HYUNDAI MOTOR MANUFACTURING ALABAMA,
22		14	LLC
23		15	Christopher N. Smith
	2	15	chrissmith@hmmausa.com
		16	700 Hyundai Boulevard
		16	Montgomery, Alabama 36105
		17	(334) 387-8057
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JOHN WAYNE APPLGATE

<p>1 I, STACEY L. JOHNSON, a CCR of Deatsville, 2 Alabama, and Notary Public for the State of 3 Alabama at Large, acting as Commissioner, 4 certify that on this date, as provided by the 5 Federal Rules of Civil Procedure and the 6 foregoing stipulation of counsel, there came 7 before me at 2500 Legends Circle, Prattville, 8 Alabama, beginning at 2:58 p.m., JOHN WAYNE 9 APPLGATE, witness in the above cause, for oral 10 examination, whereupon the following proceedings 11 were had: 12 JOHN WAYNE APPLGATE, 13 the witness, after having been first duly sworn 14 to speak the truth, the whole truth, and nothing 15 but the truth, testified as follows: 16 EXAMINATION 17 BY MR. SPORT: 18 Q Mr. Applegate, good afternoon. 19 Would you state your full name for the 20 Record, please? 21 A Okay. My name is John Wayne Applegate, 22 A-P-P-L-E-G-A-T-E. 23 Q What's your current address?</p>	<p>1 Q How long ago was that? 2 A Maybe within the last year. 3 Q So while you've been with -- 4 A Yes, sir. 5 Q -- Hyundai? Labor case meaning 6 workers' compensation? 7 A It wasn't a workers' compensation. It 8 was a hiring issue. 9 Q Hiring issue. Can you be a little more 10 specific? 11 A We had a person who was not hired by 12 the company and then brought suit against the 13 company concerning that. 14 Q Claimed they were not hired for some 15 reason? 16 A Yes. 17 Q If they were never hired, why would you 18 be testifying in that case? 19 A Because the hiring department -- I was 20 the head of the department of the department 21 they would have gone into had they been hired. 22 Q And so did you interview that 23 individual?</p>
<p>1 A 1110 Woodward, W-O-O-D-W-A-R-D, Avenue 2 Montgomery, Alabama 37106. 3 Q And how long have you lived there? 4 A I've lived there approximately four and 5 a half years. 6 Q Would that be the same length of time 7 you've worked for Hyundai? 8 A Approximately. There were four months 9 before we moved to that address that I worked 10 for Hyundai. 11 Q Temporary living arrangement? 12 A Yes, sir. 13 Q And where did you work before then? 14 A I worked in Illinois. 15 Q Who was that with? 16 A That was with Mitsubishi Motor 17 Manufacturing North America. 18 Q Have you ever given your deposition 19 before? 20 A Yes, sir. 21 Q Tell me about that. 22 A The last case was just a labor case, 23 just...</p>	<p>1 A I never did, no. 2 Q What was the substance of your 3 testimony? 4 A Just the hiring process. 5 Q Have you ever given your deposition 6 other than that case? 7 A I can't -- I can't recall any other 8 time in the past several years that I've -- no, 9 not that I can remember. 10 Q That's the only one for Hyundai -- 11 A Yes, sir. 12 Q -- while you've been in Hyundai's 13 employ? 14 A Yes. 15 Q So I assume, then, that you're familiar 16 with how depositions work. I'm going to ask you 17 some questions. 18 A Sure. 19 Q You'll give me as complete and truthful 20 an answer as you can sitting here today. And if 21 you don't remember, it's not a crime to say I 22 don't remember. 23 A Yes, sir.</p>

JOHN WAYNE APPLGATE

<p>1 Q I'm sure your lawyer will have told you</p> <p>2 not to speculate about your answer.</p> <p>3 A (Witness nods head.)</p> <p>4 Q And if you need to take a break, tell</p> <p>5 me you need to take a break.</p> <p>6 A Okay. Thank you.</p> <p>7 Q Go to the restroom or whatever you</p> <p>8 need.</p> <p>9 Mr. Applegate, I've got here what we're</p> <p>10 going to mark as the next exhibit, Exhibit 17.</p> <p>11</p> <p>12 (Whereupon, Plaintiff's Exhibit</p> <p>13 Number 17 was marked for identification</p> <p>14 and copy of same is attached hereto.)</p> <p>15</p> <p>16 Q I'm going to show that to you and</p> <p>17 represent to you that this is what your</p> <p>18 attorneys gave us as your personnel and/or Team</p> <p>19 Relations file. Would you just take a look</p> <p>20 through that?</p> <p>21 A (Witness reviews document.)</p> <p>22 Q Seem to be your file? Everything in</p> <p>23 there pertain to you? There shouldn't be any</p> <p style="text-align: right;">9</p>	<p>1 you didn't have to go, did you report to work?</p> <p>2 A To the best of my recollection, I did.</p> <p>3 Q Okay. Flip over to 191.</p> <p>4 A (Witness complied.)</p> <p>5 Q This is obviously your -- you signed</p> <p>6 this at the bottom; is that correct?</p> <p>7 A Yes, that's my signature.</p> <p>8 Q This document is entitled Receipt of</p> <p>9 Handbook Acknowledgment, Grant of License and</p> <p>10 Release of Claims. Basically where you're</p> <p>11 agreeing that if you're photographed, filmed, or</p> <p>12 videotaped that they have the right to use that</p> <p>13 in whatever promotional or other fashion that</p> <p>14 they choose -- that Hyundai chooses. Are you</p> <p>15 aware of where any video cameras would be placed</p> <p>16 within your department?</p> <p>17 A Let's see. Within my department?</p> <p>18 Because in my office there are no video cameras</p> <p>19 to the best of my knowledge.</p> <p>20 Q Well, you are in charge of Stamping</p> <p>21 Maintenance; is that correct?</p> <p>22 A My position is senior manager of plant</p> <p>23 engineering and maintenance. So all Maintenance</p> <p style="text-align: right;">11</p>
<p>1 surprises in there?</p> <p>2 A (No response.)</p> <p>3 Q If you would, down at the bottom you'll</p> <p>4 notice there's some little numbers. It says</p> <p>5 Dees v. HMMA and then a six digit number.</p> <p>6 A Okay.</p> <p>7 Q If you would, turn to -- and they're</p> <p>8 sequential. If you would, turn to the document</p> <p>9 that has 187 at the bottom of it.</p> <p>10 A (Witness complied.) Okay.</p> <p>11 Q This is apparently your jury summons?</p> <p>12 A Yes.</p> <p>13 Q And attached to that was an e-mail that</p> <p>14 said your jury duty was cancelled, you didn't</p> <p>15 have to report?</p> <p>16 A Correct.</p> <p>17 Q So when you didn't have to report, did</p> <p>18 you go to work that day?</p> <p>19 A Yeah, it was cancelled. I believe it</p> <p>20 was cancelled before I had to go.</p> <p>21 Q There just seemed to be some confusion</p> <p>22 in here as to whether or not you were there, and</p> <p>23 that's why I was asking you what took place. If</p> <p style="text-align: right;">10</p>	<p>1 departments.</p> <p>2 Q Oh, not just Stamping Maintenance?</p> <p>3 A Not just Stamping Maintenance.</p> <p>4 Q All of Maintenance?</p> <p>5 A Yes, sir.</p> <p>6 Q But you are in charge of Stamping</p> <p>7 Maintenance?</p> <p>8 A I am -- yes. Stamping Maintenance is</p> <p>9 one of the areas that reports up through me.</p> <p>10 Q And, as I understand, the services that</p> <p>11 the Stamping Maintenance Team Members provide,</p> <p>12 they do the work on the machines that are</p> <p>13 located within the Stamping area?</p> <p>14 A Yes, sir.</p> <p>15 Q Stamping Production area. So Stamping</p> <p>16 Maintenance is the Stamping Production area, so</p> <p>17 to speak?</p> <p>18 A Yes.</p> <p>19 Q They have no other separate area where</p> <p>20 they perform services; is that correct?</p> <p>21 A Basically, yes.</p> <p>22 Q So within that area are you aware that</p> <p>23 there are any video cameras?</p> <p style="text-align: right;">12</p>

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<p>1 A Yes, there are video cameras on certain</p> <p>2 pieces of equipment. I believe the output of</p> <p>3 the presses -- there is a video camera on the</p> <p>4 output of the presses that shows as you go</p> <p>5 through the press panels as they come through</p> <p>6 the press. And I believe there's one on the</p> <p>7 robots that palletize. But those are the only</p> <p>8 ones that I'm aware of.</p> <p>9 Q And those simply record production</p> <p>10 activities?</p> <p>11 A Production -- it's really more machine</p> <p>12 activity than anything else. It's, you know,</p> <p>13 how the machine is running, how it's producing,</p> <p>14 it's picking parts. You know, that type of</p> <p>15 thing.</p> <p>16 Q So I guess by your response you would</p> <p>17 not be aware of any security video cameras</p> <p>18 within that area of the facility?</p> <p>19 A No, I would not be aware of any</p> <p>20 security video cameras.</p> <p>21 Q When we drove into the plant last</p> <p>22 night, it's a very impressive facility. It's</p> <p>23 huge. There's a building out by the road. Can</p> <p style="text-align: right;">13</p>	<p>1 A Yes, sir.</p> <p>2 Q Was he the only direct report that you</p> <p>3 had relating to Stamping Maintenance?</p> <p>4 A Yes, he was the only direct report at</p> <p>5 that time that I would have in Stamping</p> <p>6 Maintenance.</p> <p>7 Q And just so -- there's been some</p> <p>8 confusion -- it's probably just on our part --</p> <p>9 as to how that organization worked in terms of</p> <p>10 its hierarchy. If you were the guy that was --</p> <p>11 you were the head of that group; right?</p> <p>12 A I'm the -- I'm the American head of</p> <p>13 department over all that.</p> <p>14 Q And Greg Prater reported to you?</p> <p>15 A Yes, sir.</p> <p>16 Q And how many direct reports did he</p> <p>17 have?</p> <p>18 A You would have to confirm this, but it</p> <p>19 is in the -- approximately -- maybe around 18.</p> <p>20 Some number around 18.</p> <p>21 Q You're including all of the Team</p> <p>22 Members?</p> <p>23 A Team Members and specialists.</p> <p style="text-align: right;">15</p>
<p>1 you tell me what that's used for? Near the</p> <p>2 interstate, the smaller building that sets</p> <p>3 apart.</p> <p>4 A If this is what you are referring to as</p> <p>5 you come over the interstate onto Hyundai</p> <p>6 Boulevard from the west or from the airport, the</p> <p>7 first building you see is the Hyundai Training</p> <p>8 Center.</p> <p>9 Q And is that where they orient new</p> <p>10 employees?</p> <p>11 A They have them -- they have new</p> <p>12 employee orientation and training there.</p> <p>13 Q And training. So other training</p> <p>14 besides just the new employee --</p> <p>15 A Yes, sir.</p> <p>16 Q -- orientation? So you would have,</p> <p>17 then, as the senior manager of Maintenance --</p> <p>18 you would have a number of direct reports, not</p> <p>19 just one or two --</p> <p>20 A Yes, sir.</p> <p>21 Q -- is that correct?</p> <p>22 A Yes, sir.</p> <p>23 Q And was Greg Prater one of those?</p> <p style="text-align: right;">14</p>	<p>1 Q Okay. So then in the chain of command,</p> <p>2 does a Team Leader have any other additional</p> <p>3 authority above and beyond a normal Team Member?</p> <p>4 A And, again, you'd have to confirm this</p> <p>5 with our Human Resources Department exactly, but</p> <p>6 Team Leader is just that. It's a Team Leader.</p> <p>7 Does not have any supervisory authority over the</p> <p>8 Team Members but still can direct work and will,</p> <p>9 you know, make reports and that type of thing.</p> <p>10 Q Okay. You indicated that you were the</p> <p>11 American head of department?</p> <p>12 A Uh-huh.</p> <p>13 Q Does that mean, then, that there's a</p> <p>14 Korean head of department?</p> <p>15 A There are Korean coordinators.</p> <p>16 Q And who would that be?</p> <p>17 A In Stamping we've had two Korean</p> <p>18 coordinators. The current Korean coordinator is</p> <p>19 Mr. Mun.</p> <p>20 Q Mr. Mun?</p> <p>21 A Uh-huh.</p> <p>22 Q And do you report to Mr. Mun?</p> <p>23 A No.</p> <p style="text-align: right;">16</p>

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1	Q Are you basically the same level --	1	the exact time or the exact nature of the
2	A Basically.	2	conversation -- but he had -- basically he was
3	Q -- on the chart?	3	complaining about some of Greg's management of
4	A Basically.	4	his, you know, work and he disagreed with Greg's
5	Q You're counterparts?	5	management of his work.
6	A Basically the same level, yes.	6	Q Did he share with you that Mr. Prater
7	Q Does he supervise anyone?	7	was demanding from him military orders relating
8	A As far as supervisory, I believe his	8	to his weekly or monthly Guard weekends and that
9	position is coordinator.	9	Mr. Prater was in other ways harassing him
10	Q What does that involve?	10	relating to his military service?
11	A It is more along the lines of a	11	MR. JOHNSON: Object to the form.
12	technical coordinator on, you know, getting --	12	Q You can answer.
13	getting work scheduled, getting the proper work	13	A Oh, okay. Yes, I was aware that
14	done. That type of thing.	14	Mr. Dees and -- Mr. Dees and I talked -- and I
15	Q And is he coordinator for Stamping	15	can't remember if Greg was there or not -- but
16	Maintenance or for Stamping and Stamping	16	we talked about Greg requesting, you know,
17	Maintenance?	17	written orders for the weekend military duty.
18	A For Stamping Maintenance.	18	That's something that I was not familiar with,
19	Q Stamping Maintenance only?	19	you know, the company position on that. So I
20	A Yes.	20	went to our Team Relations people and I asked
21	Q Okay. During the entire time that Greg	21	them what is our expectation, what's our -- you
22	Prater worked for Hyundai were you his	22	know, can we reasonably expect for a person who
23	supervisor?	23	is either in the Guard or Reserve. From our
	17		19
1	A Yes, sir.	1	Team Relations people I was informed that we can
2	Q During that time when you were his	2	ask for orders, but a verbal confirmation of,
3	supervisor, did any of his direct reports come	3	you know, this is my weekend is sufficient in
4	to you and complain about Mr. Prater?	4	accordance with the laws. So I told that again
5	A Yes, sir.	5	to Greg is that, yeah, we can ask for orders,
6	Q Can you tell me about those times that	6	but if he doesn't want to give us written
7	you remember?	7	orders, a verbal -- you know, just a verbal
8	A Again, I don't remember specifically	8	confirmation that this is my weekend or this is
9	any, you know, particular individual, but there	9	my week is sufficient.
10	were individuals who came to me and, you know,	10	Q Did Mr. Dees explain to you at that
11	complained about his management directives or	11	meeting or any other time that there was an
12	work that he was having them do.	12	annual list published of those weekends and that
13	Q And what would their complaints be in	13	he had provided that to Mr. Prater previously?
14	the nature of?	14	A We -- in the discussion, we had talked
15	A Mostly either too much overtime or --	15	about, you know, an annual or -- I don't know if
16	mostly, you know, it was with overtime, you	16	it was for every weekend but for like his two
17	know, and requiring work on the weekend or	17	weeks in the summer, some schedule that was to
18	requiring work, you know, on a day staying over	18	be provided. But beyond that, I can't recall
19	to do some work.	19	any deep discussion of that. Again, my point on
20	Q Did Leon Dees ever come to you and talk	20	that was from our Team Relations people, we can
21	to you about Mr. Prater?	21	ask, but if he doesn't give that, then a verbal
22	A Leon -- Leon and I had a conversation	22	is okay.
23	and I believe -- and, again, I don't remember	23	Q Do you recall approximately when that
	18		20

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<p>1 meeting when? Whether that was between the two</p> <p>2 of you or the three of you, including</p> <p>3 Mr. Prater?</p> <p>4 A I don't know exactly when that was.</p> <p>5 Q Do you believe that it was in 2007?</p> <p>6 2006?</p> <p>7 A No. It was before 2007.</p> <p>8 Q Sometime in 2006?</p> <p>9 A Yes.</p> <p>10 Q Do you have any knowledge of whether or</p> <p>11 not the requesting of military orders from</p> <p>12 Mr. Dees by Mr. Prater ceased after that</p> <p>13 meeting?</p> <p>14 A I don't recall.</p> <p>15 Q Did Mr. Dees ever come back to you with</p> <p>16 complaints about Mr. Prater relating to his</p> <p>17 military service?</p> <p>18 A I don't recall any other times that</p> <p>19 Mr. Dees come back with that complaint.</p> <p>20 Q Are you aware of a letter that</p> <p>21 Mr. Dees' Guard unit sent to Hyundai informing</p> <p>22 Hyundai of the rules and regulations regarding</p> <p>23 the Guard service and what Hyundai's</p> <p style="text-align: right;">21</p>	<p>1 assigned to work in the pit, clean up the pit</p> <p>2 far more frequently than any other Team Member?</p> <p>3 A I remember he had complained about</p> <p>4 having to do that work, but there again, that</p> <p>5 was -- that was work that all Team Members did.</p> <p>6 Q And by that would you mean that all</p> <p>7 Team Members should share in that equally?</p> <p>8 A That was a task that was, you know,</p> <p>9 assigned to Team Members, and I can't guarantee</p> <p>10 that every person had exactly the same number of</p> <p>11 hours. But I can guarantee -- or I can say that</p> <p>12 it was the intention that all Team Members</p> <p>13 shared in keeping the shop clean.</p> <p>14 Q Oh, sure. I mean, by human nature</p> <p>15 there could be some small variance. I mean,</p> <p>16 certainly no one would sit down and write out a</p> <p>17 schedule and say today it's your day in the</p> <p>18 pit. But would it surprise you to learn that,</p> <p>19 say, in a particular week Mr. Dees might have</p> <p>20 spent four out of those five days in the pit?</p> <p>21 MR. JOHNSON: Object to the form.</p> <p>22 A Only in the context if that was -- you</p> <p>23 know, if that was his job that week and the next</p> <p style="text-align: right;">23</p>
<p>1 responsibilities were?</p> <p>2 A I never saw any type of letter to that</p> <p>3 concerning that.</p> <p>4 Q Well, I'll take that answer, but that</p> <p>5 really wasn't what I asked. What I asked you</p> <p>6 was are you aware of a letter.</p> <p>7 A I don't recall.</p> <p>8 Q When Mr. Dees met with you, did he</p> <p>9 mention any of the other acts that Mr. Prater</p> <p>10 was participating in that Mr. Dees perceived</p> <p>11 were harassing acts relating to his military</p> <p>12 service?</p> <p>13 A I mean, nothing relating to his</p> <p>14 military service. I mean, he didn't care for</p> <p>15 the way that Mr. Prater, you know, assigned</p> <p>16 tasks or, you know, that type of thing, but the</p> <p>17 only thing that I recall in relation to the</p> <p>18 military service was just the issue of orders.</p> <p>19 Q Mr. Dees never shared with you that</p> <p>20 Mr. Prater would commonly make jokes about the</p> <p>21 National Guard?</p> <p>22 A No, not that I recall.</p> <p>23 Q Did Mr. Dees share with you that he was</p> <p style="text-align: right;">22</p>	<p>1 week it was somebody else and the next week it</p> <p>2 was somebody else.</p> <p>3 Q When Mr. Dees came to you and either</p> <p>4 informed you, made his complaint, however you</p> <p>5 want to phrase it, about being assigned to work</p> <p>6 in the pit, what did you tell Mr. Dees?</p> <p>7 A I do not recall exactly, you know,</p> <p>8 exactly, but, you know, it was along the lines</p> <p>9 of, you know, this is a job like any other job</p> <p>10 in the shop and everybody does it.</p> <p>11 Q Could you have said it all pays the</p> <p>12 same?</p> <p>13 A I don't recall saying that, but, you</p> <p>14 know, I could have said that. Sure.</p> <p>15 Q So in your view, then, would working in</p> <p>16 the pit simply be one of the assignments that</p> <p>17 one of the Team Members might have to do?</p> <p>18 A Yes.</p> <p>19 Q No more difficult, rigorous, or</p> <p>20 dangerous than any other assignment?</p> <p>21 A No.</p> <p>22 Q As I understand the pit, when the</p> <p>23 Stamping presses stamp out parts, the material</p> <p style="text-align: right;">24</p>

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1 that is not stamped out comes down the shoot --
 2 or scrap pieces maybe, not the entire sheet --
 3 comes down the shoot onto the conveyor and then
 4 goes to the end of the conveyor into an area
 5 where they bale it --

6 A Yes.

7 Q -- is that correct? So when those
 8 pieces come out of that shoot -- and we observed
 9 some of them on the floor last night -- some of
 10 them are little round disks, some of them are
 11 other nondescript pieces and some of them seem
 12 to be fairly large and fairly sharp. Would that
 13 be consistent with your knowledge of what comes
 14 out of those shoots onto that conveyor?

15 A Yes.

16 MR. JOHNSON: Object to the form.

17 Q That was a yes?

18 A Yes.

19 Q And is it your experience that
 20 oftentimes materials comes over the conveyor and
 21 spills onto the floor?

22 MR. JOHNSON: Object to the form.

23 A Not often. But there is material

25

1 Q So what would you estimate the
 2 percentage of time that would be split between
 3 working under the Stamping press in that
 4 location versus working near the conveyor
 5 picking up scrap that had come off of it?

6 A For the Maintenance person, he would be
 7 spending the majority of his or her time
 8 underneath the press on the press side and not
 9 so much time over by the scrap shoot. The scrap
 10 shoots -- I mean, there's no equipment over
 11 there, you know, so they spend their time where
 12 the equipment is.

13 Q The Team Members, as I understand it,
 14 complete daily reports -- are required to
 15 complete daily reports and turn those in?

16 A Yes.

17 Q And put them in a book?

18 A Yes.

19 Q I guess that book is maintained by
 20 whoever the supervisor is?

21 A Yes.

22 Q Okay. And I assume that those daily
 23 reports would log whatever it is that Team

27

1 that -- especially if there's a -- the conveyor
 2 belt stops or there's blockage on the conveyor
 3 belt that it may spill over.

4 Q So if I saw a pile of that material on
 5 the floor last night, where would that have come
 6 from?

7 A Again, probably if there was a blockage
 8 or some material got hung up and spilled over.

9 Q So when a Team Member is assigned to
 10 work in the pit, what is it that he's doing?

11 A Well, if he is assigned to work in the
 12 pit, he would actually not be -- actually not be
 13 very near that conveyor. He would actually be
 14 on the other side under the presses where the
 15 hydraulics are, which is separate from the belt
 16 where the scrap goes. And under the presses
 17 where the hydraulics are -- I mean, the Team
 18 Member, they do patrols down there, they check
 19 the equipment, they would be cleaning up any
 20 hydraulic fluid, any material that was used
 21 during any kind of maintenance activity they
 22 would be cleaning that up. That type of thing.
 23 It's just general housekeeping.

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1 Member was assigned to do that day?

2 A It should, yes.

3 Q It should. So if I were to look at
 4 those daily reports, it should tell me what,
 5 say, on any particular day Mr. Dees was doing
 6 versus what Mr. Archer, Mr. Barefoot, or any
 7 other Team Member was doing?

8 A Yes. If they -- again, if they
 9 completed them, you know, accurately it should.

10 MR. SPORT: Matt, I think those are
 11 responsive and we'd like those. I haven't seen
 12 any of those.

13 MR. JOHNSON: I don't -- I'm not sure
 14 what they would be responsive to. I'm not
 15 saying they're not responsive. They certainly
 16 haven't come up. And I don't know anything
 17 about the retention policy on those or how long
 18 they keep them or who keeps them. So I don't
 19 know. We can -- I can certainly go back and try
 20 to figure out, one, whether they're responsive
 21 to any and, two, if we still have them or would
 22 have them.

23 MR. SPORT: Well, let's ask

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<p>1 Mr. Applegate.</p> <p>2 Q Mr. Applegate, do you know how long</p> <p>3 those documents are retained?</p> <p>4 A No, I don't.</p> <p>5 Q Do you know where they're kept?</p> <p>6 A Those would be kept in the shop. I'm</p> <p>7 not sure how long they keep those, if it's for</p> <p>8 month by month or six months or...</p> <p>9 Q And by shop, you mean -- is there an</p> <p>10 area that's called the shop that --</p> <p>11 A The office.</p> <p>12 Q The office. Okay. And that is like a</p> <p>13 Maintenance office?</p> <p>14 A Yes.</p> <p>15 Q So people report in and out of there --</p> <p>16 A Yes.</p> <p>17 Q -- when they come in to work and they</p> <p>18 go out to their assigned tasks?</p> <p>19 A (Witness nods head.)</p> <p>20 MR. SPORT: Well, Matt, if you would</p> <p>21 please check on that. I'll also look at our</p> <p>22 request just to verify that those are</p> <p>23 responsive, but I believe that they relate to</p> <p style="text-align: right;">29</p>	<p>1 saying something like to Mr. Dees.</p> <p>2 Q I'm going to show you what has been</p> <p>3 previously marked as Plaintiff's Exhibit 9, and</p> <p>4 it's a set of documents that your lawyers</p> <p>5 produced to us. And included in it are a number</p> <p>6 of policies. These documents are similarly</p> <p>7 numbered. We call those Bates numbers. And</p> <p>8 these are numbered 1 through I believe it's 93.</p> <p>9 And I ask you to take a look starting at number</p> <p>10 80. Document number 80, as it says, is an</p> <p>11 electronics device policy that talks about the</p> <p>12 use of electronic devices within the plant; is</p> <p>13 that correct?</p> <p>14 A Yes.</p> <p>15 Q And down at the bottom, not the Bates</p> <p>16 number, but the last little statement right</p> <p>17 above the page number of the policy, there's a</p> <p>18 sentence that says Notice, paper copies of this</p> <p>19 procedure should not be used for decision making</p> <p>20 purposes. Only use the electronic copy at -- I</p> <p>21 assume that is a -- like a network server</p> <p>22 reference -- r:hrdepartment/policies and</p> <p>23 form/policiesandprocedures. Is that what that</p> <p style="text-align: right;">31</p>
<p>1 some of our allegations and I think they'd be</p> <p>2 responsive.</p> <p>3 MR. JOHNSON: Okay. I'm happy to look.</p> <p>4 MR. SPORT: Additionally, while we're</p> <p>5 talking about that, I believe Mr. Dees testified</p> <p>6 the other day that Mr. Prater was the one that</p> <p>7 received the annual Guard weekend list and kept</p> <p>8 it in a book. Can you see if you might be able</p> <p>9 to located that? Those were not produced to</p> <p>10 us. We produced copies to Hyundai in our</p> <p>11 production, but we've not received whatever</p> <p>12 Hyundai had. So I think all that information</p> <p>13 would be in the relatively same location.</p> <p>14 MR. JOHNSON: Okay. I'll look.</p> <p>15 Q When Mr. Dees would come to you and</p> <p>16 talk to you about Mr. Prater, did you tell</p> <p>17 Mr. Dees that Mr. Prater was in charge and he</p> <p>18 can run his shop as he sees fit?</p> <p>19 A Huh-uh. I did not. I'm sure I would</p> <p>20 not use those words.</p> <p>21 Q Would you use words to that effect?</p> <p>22 A I don't recall ever saying anything</p> <p>23 like that to Mr. Dees. I mean, I don't recall</p> <p style="text-align: right;">30</p>	<p>1 is?</p> <p>2 A Yes.</p> <p>3 Q It's a network drive reference?</p> <p>4 A Yes.</p> <p>5 Q All right. If you would, flip over to</p> <p>6 page 81, which is the second page of this</p> <p>7 policy. It appears that someone has written in</p> <p>8 where it says section 5.1.1 -- they have written</p> <p>9 in 5.2.1, and then there are other notations</p> <p>10 made on this document. Do you know who made</p> <p>11 those notations?</p> <p>12 A No.</p> <p>13 Q It just seems odd that we would be</p> <p>14 given a document that has been hand altered when</p> <p>15 the notice at the bottom says don't use the</p> <p>16 paper copy, use the one online.</p> <p>17 MR. SPORT: Can you just check me,</p> <p>18 Matt, and make sure that the copy you gave us</p> <p>19 has that on it? It's very possible that we</p> <p>20 could have done that. I'd just like to know the</p> <p>21 answer to that.</p> <p>22 MR. JOHNSON: No. I know that's the</p> <p>23 way we got the original paper version.</p> <p style="text-align: right;">32</p>

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<p>1 Q So we have an unexplained alteration on</p> <p>2 a document that's not official unless it's</p> <p>3 electronic. But you don't know the answer to my</p> <p>4 question?</p> <p>5 A No, sir.</p> <p>6 Q Flip over to document number 83.</p> <p>7 A (Witness complied.)</p> <p>8 Q This is the harassment policy, and it</p> <p>9 starts in the first paragraph there, HMMA is</p> <p>10 committed to providing a work environment that</p> <p>11 is free of discrimination and unlawful</p> <p>12 harassment. Actions, words, jokes, or comments</p> <p>13 based on an individual's sex, race, ethnicity</p> <p>14 age -- 40 plus -- religion or any other legally</p> <p>15 protected characteristic will not be tolerated.</p> <p>16 And it goes on to say that this does not just</p> <p>17 include sexual harassment. Are you familiar</p> <p>18 with this policy?</p> <p>19 A Yes, sir.</p> <p>20 Q So you understand -- you understood at</p> <p>21 the time and have, I guess, come to understand</p> <p>22 since that an individual's military status is</p> <p>23 one of these protected classes --</p> <p style="text-align: right;">33</p>	<p>1 A Yes.</p> <p>2 Q The first paragraph also says this type</p> <p>3 of behavior is strictly prohibited. It says --</p> <p>4 and then it goes in the second paragraph,</p> <p>5 harassment can take many forms. It may be but</p> <p>6 is not limited to words, signs, jokes, pranks,</p> <p>7 intimidation, physical contact, or violence. If</p> <p>8 you would, flip over to page 84.</p> <p>9 A (Witness complied.)</p> <p>10 MR. JOHNSON: Bates number?</p> <p>11 Q Bates number 84. Under the numbered</p> <p>12 paragraph two, reporting harassment. It say, if</p> <p>13 you feel that you have experienced harassment,</p> <p>14 you should take action immediately. I guess</p> <p>15 that's speaking to each Team Member. Would you</p> <p>16 agree that that's what Mr. Dees did when he came</p> <p>17 to you and complained about his -- the demanding</p> <p>18 of Mr. Prater of orders for his Guard weekends?</p> <p>19 MR. JOHNSON: Object to the form.</p> <p>20 A Again, reading this and looking back,</p> <p>21 what was -- I don't see that as a harassment.</p> <p>22 That was a question about whether or not we have</p> <p>23 the ability and authority to ask for orders.</p> <p style="text-align: right;">35</p>
<p>1 MR. JOHNSON: Object to the form.</p> <p>2 Q -- is that correct? Do you understand</p> <p>3 that someone's Guard status is a protected class</p> <p>4 under this policy?</p> <p>5 A Let me read through the policy again.</p> <p>6 Q Absolutely. Please do.</p> <p>7 A (Witness reviews document.) Okay. I</p> <p>8 don't know at the time this came out that I knew</p> <p>9 the military status was covered by this policy.</p> <p>10 I understand that now.</p> <p>11 Q You don't recall if you understood</p> <p>12 it --</p> <p>13 A At the time.</p> <p>14 Q -- during the time that Mr. Dees came</p> <p>15 to you and complained?</p> <p>16 A No, I don't remember that.</p> <p>17 Q Can we agree, though, that up at the</p> <p>18 top left corner of that document it says</p> <p>19 revision date 4 November 2004?</p> <p>20 A Yes.</p> <p>21 Q So I think we would be in agreement</p> <p>22 that this policy existed and was in effect</p> <p>23 during the entire term of Mr. Dees' employment?</p> <p style="text-align: right;">34</p>	<p>1 And, again, as I said, we went through Team</p> <p>2 Relations, clarified that point, and then got</p> <p>3 that information to make sure that Mr. Prater,</p> <p>4 you know, understood what the policy was on</p> <p>5 that.</p> <p>6 Q If Mr. Prater asked Mr. Dees for orders</p> <p>7 once and Mr. Dees explained to Mr. Prater that,</p> <p>8 no, that's not the way that works, there's this</p> <p>9 document, I gave it to you when I was hired</p> <p>10 which shows the weekends, Mr. Prater took that</p> <p>11 document, oh, yes, you're correct, I accept</p> <p>12 that, put it in a binder, then you would have</p> <p>13 never had a visit from Mr. Dees; correct?</p> <p>14 MR. JOHNSON: Object to the form.</p> <p>15 A I can't answer that. I don't know.</p> <p>16 Q Doesn't it seem logical that Mr. Dees</p> <p>17 only came to you because he had been asked</p> <p>18 multiple times for these orders?</p> <p>19 MR. JOHNSON: Object to the form.</p> <p>20 A I have no information that he was asked</p> <p>21 multiple times. Again, my understanding was</p> <p>22 that Mr. Prater had asked him for the orders and</p> <p>23 there was a disagreement about, you know,</p> <p style="text-align: right;">36</p>

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<p>1 providing the orders. And, like I said, I went 2 back to Team Relations for clarification on what 3 we can ask and what we can reasonably expect. 4 Got the explanation from our Team Relations 5 people, you know, relayed that to Mr. Prater, 6 and then, to my knowledge, that was the end of 7 the situation.</p> <p>8 Q Okay. I'll accept that. If, in fact, 9 the demanding of the orders occurred after that 10 meetings -- continued to occur after that 11 meeting -- and on at least one occasion 12 Mr. Prater told Mr. Dees that he was going to 13 make him take vacation to avoid working on a 14 weekend when he would otherwise have been 15 scheduled to work but he was supposed to go to 16 his Guard duty, would you think that would 17 constitute harassment?</p> <p>18 MR. JOHNSON: Object to the form.</p> <p>19 A I have no comment on that. I don't 20 know. I have no knowledge that that happened.</p> <p>21 Q Well, I was just asking you to make an 22 assumption. The jury is going to hear the 23 facts.</p> <p style="text-align: right;">37</p>	<p>1 over to Team Relations?</p> <p>2 MR. JOHNSON: Object to the form.</p> <p>3 A Again, I discussed that with Team 4 Relations to clarify what we could and could not 5 ask for.</p> <p>6 Q Okay. Paragraph 3 there says -- 7 MR. JOHNSON: What page are you on? 8 MR. SPORT: I'm on the same page, 84. 9 Bates number 84.</p> <p>10 Q Numbered paragraph 3, all reports will 11 be promptly investigated with due regard for the 12 privacy for everyone involved. Team Relations 13 department will investigate the complaints with 14 particular care and to the extent possible keep 15 them confidential. That sounds like a little 16 bit more rigorous process than you going to them 17 and asking them a question to clarify the 18 responsibilities of Hyundai with respect to 19 Guard duty. Did an investigation of the nature 20 described in paragraph 3 occur?</p> <p>21 A I have no knowledge if an investigation 22 occurred.</p> <p>23 Q Do you have any knowledge that Mr. Dees</p> <p style="text-align: right;">39</p>
<p>1 A Sure.</p> <p>2 Q And the jury is going to decide what 3 the facts are. But if the jury decides that 4 that happened would that be harassment?</p> <p>5 MR. JOHNSON: Object to the form.</p> <p>6 A Again, that's something that, you know, 7 I'd have to leave up to our Team Relations 8 people to determine if that violates the policy 9 or not.</p> <p>10 Q Okay. Well, let's say -- assume for me 11 that Mr. Dees was black and he came to you and 12 told you that Mr. Prater was making fun of him 13 because he was black, would that constitute 14 harassment under this policy?</p> <p>15 MR. JOHNSON: Object to the form.</p> <p>16 A Again, I would turn that over to Team 17 Relations people and they would do an 18 investigation and they would make that 19 determination.</p> <p>20 Q Okay. That's fair enough. When 21 Mr. Dees came to you and told you that 22 Mr. Prater was harassing him about his Guard 23 duty and his military orders, did you turn that</p> <p style="text-align: right;">38</p>	<p>1 at some point or on at least one occasion went 2 to Human Resources directly and complained?</p> <p>3 A I can't recall anything specific about 4 that.</p> <p>5 Q Would you agree that if he had gone to 6 Human Resources and complained that he was being 7 harassed because of his Guard obligation, and 8 if, in fact, Human Resources had instigated or 9 initiated the investigation discussed in 10 paragraph 3 right here that you would have heard 11 about it?</p> <p>12 A Not necessarily.</p> <p>13 Q As his superior, you would not have 14 heard about it?</p> <p>15 A Not necessarily.</p> <p>16 Q Numbered paragraph 1 on this same page 17 starting with the second sentence it says, any 18 Team Member who becomes aware of an incident of 19 harassment, whether by witnessing the incident 20 or being told of it, must report it to the Team 21 Relations manager or any member of management of 22 HMMA with whom you feel comfortable. Who is the 23 Team Relations manager?</p> <p style="text-align: right;">40</p>

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<p>1 A Team Relations -- the manager of Team 2 Relations is Audie Swegman.</p> <p>3 Q So under this policy, they would either 4 go to him or any other member of management that 5 they felt comfortable with?</p> <p>6 A (Witness nods head.)</p> <p>7 Q And I guess my question to you is, when 8 Dees came to you and complained about what was 9 going on with his Guard obligation in the 10 demanding of orders, would you not have been 11 required by this policy to report that?</p> <p>12 MR. JOHNSON: Object to the form.</p> <p>13 A And as I said, I went and discussed 14 with Team Relations the obligations and 15 expectations for military orders and how we 16 handle that. And then they gave me the company 17 policy on that and I got that back to 18 Mr. Prater.</p> <p>19 Q So at the time -- let me ask you this 20 question first. At the time of that visit 21 between you and Mr. Dees were you aware of this 22 policy?</p> <p>23 A Yes.</p> <p style="text-align: right;">41</p>	<p>1 Q Mr. Prater was demanding them and he 2 was telling Mr. Prater that, no, I don't have to 3 provide them --</p> <p>4 MR. JOHNSON: Object to the form.</p> <p>5 Q -- because I've given you this list?</p> <p>6 MR. JOHNSON: Object to the form.</p> <p>7 A I think Greg was asking for them, and I 8 don't really know what Mr. Dees' response was. 9 But I know there was a question on what should 10 be provided and what we can reasonably ask.</p> <p>11 Q And if I asked this question a little 12 bit ago, I apologize, but I don't recall it so 13 I'm going to ask it again. Do you recall 14 Mr. Dees telling you of any other comment or 15 action made by Mr. Prater or done by Mr. Prater 16 towards Mr. Dees relating to his Guard activity; 17 making fun of the Guard, telling Mr. Dees he was 18 going to have to use vacation to go fulfill his 19 Guard commitment?</p> <p>20 A I don't remember any of that.</p> <p>21 Q Anything of that nature?</p> <p>22 A No, I don't recall any of that.</p> <p>23 Q If you would, flip over to Bates number</p> <p style="text-align: right;">43</p>
<p>1 Q So at the time that Mr. Dees came to 2 you and complained of the situation, did you 3 simply not view what he told you as harassment 4 under this policy or were you unclear that his 5 Guard service was a protected class under this 6 policy?</p> <p>7 MR. JOHNSON: Object to the form.</p> <p>8 A The situation at that time, it was a 9 question, you know, on what was our obligation 10 and expectation when it came to, you know, 11 orders for the Guard. And the question was 12 outstanding what can we reasonably expect and 13 then -- you know, that was the question on the 14 table. I took that question, found the answer 15 for it, and then, you know, gave that back to 16 Mr. Prater.</p> <p>17 Q Would you agree that when Mr. Dees came 18 to you it was because he was not able to resolve 19 the issue with Mr. Prater?</p> <p>20 A I would agree that when he came and 21 talked with me about it, yeah, there was an open 22 question between him and Greg about the -- you 23 know, the orders and what we can expect.</p> <p style="text-align: right;">42</p>	<p>1 85.</p> <p>2 A (Witness complied.)</p> <p>3 Q That's the page -- obviously this 4 doesn't have anything to do with Guard duty. I 5 think we can agree on that.</p> <p>6 MR. JOHNSON: I was wondering where you 7 were going.</p> <p>8 Q Consensual romantic or sexual 9 relationships. HMMA strongly discourages 10 romantic or sexual relationships between Team 11 Members. It prohibits them between any HMMA 12 member of management and any subordinate Team 13 Member. Are you aware of any of your direct 14 reports having such a relationship as prohibited 15 by this policy?</p> <p>16 A No.</p> <p>17 Q All right. If you would, flip on over 18 to Bates number 87.</p> <p>19 A (Witness complied.)</p> <p>20 Q This is the military leave policy.</p> <p>21 A Uh-huh.</p> <p>22 MR. SPORT: And before we talk about 23 this, Matt, I believe I wrote you about this in</p> <p style="text-align: right;">44</p>

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<p>1 a letter. If I didn't, I should. There is one 2 request that talks about all policies. You've 3 simply given me the ones that you felt were 4 relevant to the issues in this case. Our 5 request -- we had one request that was specific 6 to that, and we had another request that talked 7 about all of the policies. And it's clear that 8 these policies are not numbered sequentially, so 9 we don't have them all. And I don't know that 10 you objected to the other ones. So can you go 11 back and look at your response to me? 12 MR. JOHNSON: I'll certainly go back 13 and look. My recollection -- subject to 14 actually going and looking -- is that we 15 provided potentially responsive policies. And 16 for some reason I think we may have indicated 17 somewhere some other policies, but withheld them 18 on the grounds of relevance or something. But I 19 can't remember exactly. But I'll be happy to go 20 back and look. 21 MR. SPORT: Please do because I don't 22 recall an objection on that point, and I know 23 that we had two requests that dealt with</p> <p style="text-align: right;">45</p>	<p>1 effect during the entire of Mr. Dees' 2 employment? 3 A I'm trying to remember when he started 4 work. 5 Q I'll represent to you that it was 6 November of '05. 7 A Then yes. 8 Q Then would you agree by what we just 9 read that he would be covered in the description 10 in paragraph 2.1? 11 MR. JOHNSON: Object to the form. 12 A To be honest, I'm not sure exactly what 13 military group he was attached to. You know, I 14 don't know specifics of which military group he 15 was attached to, but I assume it's covered by 16 this. 17 Q Okay. When you went to Human Resources 18 to ask them that question, did they refer to 19 this policy at all? Did this policy come up in 20 your discussions? 21 A I believe the answer they gave me was 22 in accordance with this policy, but we did not 23 review specifically this policy.</p> <p style="text-align: right;">47</p>
<p>1 policies and procedures. One specifically dealt 2 with the issues in this case and the other was 3 more broad that would have covered everything 4 that's in this number sequence that seems to be 5 missing. 6 MR. JOHNSON: And I'll be happy to go 7 back and look, but today I don't recall ever 8 receiving anything from you suggesting you felt 9 like you were owed more or that there were more. 10 MR. SPORT: I'll go back and look at 11 the correspondence and get you that if you'll 12 agree to check your responses to me. 13 MR. JOHNSON: (Counsel nods head.) 14 Q Bates number 87, Military Leave 15 Policy. Paragraph 2.1, Team Members who are 16 inducted into the U.S. Armed Forces or who are 17 Reserve members of the U.S. Armed Forces or 18 state militia groups will be granted leaves of 19 absence for military service, training, or other 20 obligations in compliance with state and federal 21 laws. These Team Members may use accrued 22 vacation leave but are not required to do so. 23 You would agree with me that this policy was in</p> <p style="text-align: right;">46</p>	<p>1 Q They did not refer you to this policy? 2 A No. They just answered my question. 3 Q You know Wendy Warner? 4 A Yes, sir. 5 Q She indicated in her deposition that 6 these inquiries by Mr. Dees brought to light a 7 situation of confusion regarding what ought to 8 be done with Guard members like Mr. Dees. Have 9 you heard anything about that? Are you familiar 10 with that? 11 A No. 12 Q I mean, it sounds like when you were 13 unfamiliar with what -- the answer to what 14 Mr. Dees was asking you going to HR, you seemed 15 a little bit confused by his question. You were 16 not completely familiar with this policy at the 17 time; is that correct? 18 A I wanted to get a clarification, and I 19 wanted to make sure that I gave him and Greg the 20 correct answer. 21 Q You had not previously had a Guard 22 employee in your department? 23 A Our department had Guard employees,</p> <p style="text-align: right;">48</p>

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<p>1 but, you know, this -- his question had not come 2 up.</p> <p>3 Q Paragraph 3.1 on that same document, 4 Team Members are requested to notify their 5 supervisors as soon as they're aware of the 6 military obligation. Did you tell me earlier 7 that you were not familiar with whether or not 8 Mr. Dees had provided that list of Guard 9 weekends?</p> <p>10 A I can't recall if he did or not.</p> <p>11 Q Are you aware of any instances where 12 Mr. Dees went to Human Resources about his Guard 13 obligation and the fact that Mr. Prater was 14 demanding these orders and doing some of these 15 other things that I've asked you about? Did 16 Human Resources come to you and discuss that 17 with you?</p> <p>18 A No.</p> <p>19 MR. JOHNSON: Object to the form.</p> <p>20 Q Flip over one page to Bates number 88. 21 A (Witness complied.) 22 Q Serious Misconduct Policy. This policy 23 also seems to have been in effect since November</p> <p style="text-align: right;">49</p>	<p>1 from this policy or not.</p> <p>2 Q Well, the first sentence of the second 3 paragraph says HMMA policy states serious and 4 excessive violations of HMMA's performance 5 standards is a Serious Misconduct Violation.</p> <p>6 A Again, I'm not sure if the quote is 7 found in this policy.</p> <p>8 Q Okay. Well, let's flip back over -- 9 holding that document flip back over to Bates 10 number 88. Have you got that?</p> <p>11 A Okay. Yes.</p> <p>12 Q Under numbered paragraph 3.0 look at 13 the second bullet point.</p> <p>14 A Okay. Yes, that's the same.</p> <p>15 Q She seems to be quoting that standard. 16 So, then, it would appear, then, that she -- 17 that HMMA fired Mr. Dees because of a violation 18 of the Serious Misconduct Policy. Would you 19 agree with that?</p> <p>20 A It appears that this comes from the 21 Serious Misconduct Policy, yes.</p> <p>22 Q Okay. The third paragraph, which is 23 simply one sentence, states, based on the</p> <p style="text-align: right;">51</p>
<p>1 of 2004. Are you aware of whether or not 2 Mr. Dees was fired because of a violation of 3 this policy?</p> <p>4 MR. JOHNSON: Object to the form.</p> <p>5 A I don't recall. I just don't recall as 6 to the exact policy.</p> <p>7 Q Well, I'll tell you what. Why don't we 8 go back up to the front of that stack of 9 documents you have there and look at Bates 10 number 6?</p> <p>11 A (Witness complied.)</p> <p>12 Q Read that letter. Have you ever seen 13 that letter before?</p> <p>14 A No.</p> <p>15 Q How about just reading that real 16 quick? It's pretty short.</p> <p>17 A Okay.</p> <p>18 Q She seems to be quoting the Serious 19 Misconduct Policy, does she not? This is a 20 letter, just for the Record, written by Wendy 21 Warner to Mr. Dees dated February 26th 22 terminating him.</p> <p>23 A I don't know if that quotation comes</p> <p style="text-align: right;">50</p>	<p>1 aforementioned -- his violation of the policy -- 2 I regret that I have no alternative but to 3 terminate your employment effectively 4 immediately. And what I want you to focus on is 5 I have regret that I have no alternative. That 6 sounds like that's a hard-and-fast rule, doesn't 7 it? You violate the policy, you're gone?</p> <p>8 MR. JOHNSON: Object to the form.</p> <p>9 A I really can't comment on that. I 10 don't know.</p> <p>11 Q Are you familiar with the Serious 12 Misconduct Policy?</p> <p>13 A Familiar with it, yes.</p> <p>14 Q What's your interpretation of what it's 15 designed to do?</p> <p>16 MR. JOHNSON: Object to the form.</p> <p>17 A It's, you know, part of the -- it's 18 part of the corrective action, you know, 19 procedures that we have.</p> <p>20 Q You said you're familiar with the 21 policy; correct?</p> <p>22 A Yes.</p> <p>23 Q Would you agree with me that there is</p> <p style="text-align: right;">52</p>

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<p>1 more than one alternative to handling someone 2 who has violated the Serious Misconduct Policy? 3 MR. JOHNSON: Object to the form. 4 A In the Serious Misconduct Policy it has 5 provisions for termination and serious 6 misconduct letters and that type of thing. 7 Q So termination isn't the only option 8 when someone violates this policy? 9 A Again, termination is not the only 10 option based on the way the policy is written. 11 Q Do you know who decides who stays and 12 who goes? 13 A All of this goes before a review board. 14 Q Is that a static group of individuals? 15 A Actually, I'm not sure exactly how it 16 works. 17 Q Have you ever participated in that 18 process? 19 A Only from the standpoint if a person in 20 my department is being considered for a serious 21 misconduct or for termination, I go before that 22 board. And that's my only involvement with it. 23 Q And how many times have you gone before</p> <p style="text-align: right;">53</p>	<p>1 Q Who were they? 2 A The people that I remember that were in 3 the room at the time -- but, again, I don't know 4 if they're on the board or if they're advisors 5 or if they're presenters. I don't know their -- 6 I don't know their duties or position on that. 7 I remember the plant manager, John Calsom 8 (phonetic) was in there, Wendy Warner was in 9 there, there was usually somebody from Team 10 Relations in there, our general counsel is in 11 there. That's all I remember right now. 12 Q Is this review board also what's been 13 referred to as a termination committee meeting? 14 A I think so. Again, I just go before 15 the review board. The review board is what I 16 understood it to be. And the termination review 17 committee, I'm not -- I'm not sure it's always 18 the termination review committee. 19 Q Did you attend the review board meeting 20 relating to Mr. Dees? 21 A Yes. 22 Q And what was your purpose there? 23 A Representing the department. And, you</p> <p style="text-align: right;">55</p>
<p>1 that board? 2 A I can't remember an exact number, 3 but -- 4 Q More than one? 5 A More than one. 6 Q And on each of those occasions that you 7 went before the board, do you recall it being 8 basically the same group of people? 9 A It was not -- well, I'm not sure who 10 was on the board and who was just there. I 11 mean, just participating. I don't know. You 12 know, because I go in if it's one of my people, 13 there's somebody from Team Relations there, the 14 facts of the case are reviewed, and then 15 basically I leave. And there's some 16 deliberation and then a decision is made. So, 17 again, you know, there's people in there, but I 18 don't know if it's static, if it changes. I 19 don't really know how the board is put together. 20 Q You don't recall seeing any of the same 21 people there? 22 A Oh, yes, there were some of the same 23 people there.</p> <p style="text-align: right;">54</p>	<p>1 know, mostly just the facts of the case as I 2 remember are presented by Team Relations and the 3 review board can ask or would ask questions of 4 me as far as, you know, is my understanding of 5 what Team Relations has presented true. And in 6 this case, yes, based on my understanding. And 7 then that's basically about it. 8 Q Did they ask you for -- since it was 9 one of your subordinates, did they ask you for a 10 recommendation as to what to do with him? 11 A I'm trying to remember. In this 12 particular case, the recommendation, again, from 13 Team Relations -- the recommendation was 14 termination and, you know, I concurred with that 15 recommendation. 16 Q Who made the presentation from Team 17 Relations? 18 A I knew you were going to ask me that. 19 It's Team Relations or Wendy. 20 Q Well, while you are thinking about that 21 answer this question. Is there a difference 22 between Human Resources and Team Relations? 23 A Team Relations is a sub department</p> <p style="text-align: right;">56</p>

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<p>1 under Human Resources.</p> <p>2 Q Is it like a disciplinary quality</p> <p>3 control?</p> <p>4 A I think they have a larger, you know,</p> <p>5 focus than that, but they're part of Human</p> <p>6 Resources.</p> <p>7 Q Okay. Do you recall yet who might have</p> <p>8 made the presentation for Team Relations?</p> <p>9 A I'm trying to think who was in there.</p> <p>10 I'm not -- I can't remember. I'm not sure.</p> <p>11 Maybe Wendy made some presentation and the Team</p> <p>12 Relations guy. You'd have to go back to the</p> <p>13 notes.</p> <p>14 Q Is Rob Clevenger in Team Relations?</p> <p>15 A Yes.</p> <p>16 Q So might it have been him?</p> <p>17 A It might have been Rob Clevenger.</p> <p>18 Q All right. In that same stack of</p> <p>19 documents you have there, take a look at Bates</p> <p>20 number 733. Have you ever seen that document</p> <p>21 before? And while you're reading that, I'm just</p> <p>22 going to say for the Record this is a document</p> <p>23 entitled Team Relations Memo dated February 23,</p> <p style="text-align: right;">57</p>	<p>1 in this memo, is that your understanding of what</p> <p>2 happened, and you would have said yes?</p> <p>3 A To the best of my knowledge.</p> <p>4 Q Then someone in Team Relations/Human</p> <p>5 Resources would have made the recommendation to</p> <p>6 terminate Mr. Dees?</p> <p>7 A Yes.</p> <p>8 Q And you would have concurred?</p> <p>9 A Yes.</p> <p>10 Q On what basis did you concur that</p> <p>11 Mr. Dees should be terminated?</p> <p>12 A In the discussion on Mr. Dees sleeping</p> <p>13 there was a discussion of other instances within</p> <p>14 the company. This was in accordance with the</p> <p>15 company past practice for terminating a person</p> <p>16 who goes out of his way to find a place to</p> <p>17 sleep.</p> <p>18 Q Let's take that one piece at a time.</p> <p>19 On what particular facts in this memo do you</p> <p>20 rely upon to form your opinion that he went out</p> <p>21 of his way to find a place to sleep?</p> <p>22 A The location, third level location, and</p> <p>23 that he was asleep in front of a control panel</p> <p style="text-align: right;">59</p>
<p>1 2007 from Rob Clevenger to Greg Kimball.</p> <p>2 A I don't recall seeing this memo.</p> <p>3 Q Well, if you would take just a moment</p> <p>4 and read it. Then I'm going to ask you is</p> <p>5 this -- is what's written in this memo the</p> <p>6 substance of what was presented at that review</p> <p>7 board.</p> <p>8 MR. JOHNSON: Off the Record.</p> <p>9</p> <p>10 (Whereupon, a discussion was held off</p> <p>11 the Record.)</p> <p>12</p> <p>13 A Yes, this is my understanding of what</p> <p>14 was presented at the review board.</p> <p>15 Q So as I understand what you told me one</p> <p>16 or two questions ago, someone, whether it was</p> <p>17 Mr. Clevenger and/or Ms. Warner, presented the</p> <p>18 facts contained in this memo --</p> <p>19 A Yes.</p> <p>20 Q -- to the review board?</p> <p>21 A Yes.</p> <p>22 Q Someone would have asked you,</p> <p>23 Mr. Applegate, you agree with the facts that are</p> <p style="text-align: right;">58</p>	<p>1 with the doors open in kind of a tucked-away</p> <p>2 area.</p> <p>3 Q Okay. So for your opinion that he went</p> <p>4 out of his way to find a place to sleep, you</p> <p>5 rely upon, one, that the doors were open on the</p> <p>6 panel, and that, two, he was in an</p> <p>7 out-of-the-way spot; is that correct?</p> <p>8 A He was in -- yes, he was in an</p> <p>9 out-of-the-way spot and up in an area where --</p> <p>10 very difficult to see him.</p> <p>11 Q Are you familiar with the area where he</p> <p>12 was?</p> <p>13 A Yes.</p> <p>14 Q And where is that?</p> <p>15 A It's in the Stamping Shop up on what</p> <p>16 would be the third level or the mezzanine right</p> <p>17 below the roof level part of the SOPS.</p> <p>18 Q And that control panel you're talking</p> <p>19 about is that what's referred to as the PLC?</p> <p>20 A Yes.</p> <p>21 Q Are you familiar at all with how</p> <p>22 Mr. Prater assigned tasks to the Team Members?</p> <p>23 A They were given area responsibilities.</p> <p style="text-align: right;">60</p>

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<p>1 Q And are you familiar with how he told</p> <p>2 them to carry out those responsibilities?</p> <p>3 A Not specifically, no.</p> <p>4 Q What I mean by that is -- let me be a</p> <p>5 little more specific -- are you aware that he</p> <p>6 issued them instructions to remain within their</p> <p>7 area of responsibility?</p> <p>8 A Yes, yes. He would normally do that.</p> <p>9 Q And so is this area called the SOPS?</p> <p>10 A Yes.</p> <p>11 Q And if Mr. Dees were assigned the SOPS,</p> <p>12 would this be an unusual place for him to be?</p> <p>13 A No, not necessarily.</p> <p>14 Q Okay.</p> <p>15 A The location, not sitting in a chair</p> <p>16 asleep, but the location.</p> <p>17 Q That's what I'm referring to, the</p> <p>18 location</p> <p>19 A Yeah, the whole area of the third floor</p> <p>20 and the second floor is all the SOPS.</p> <p>21 Q Okay. So if he were assigned to the</p> <p>22 SOPS, where he was would not be an unusual place</p> <p>23 for him to be?</p> <p style="text-align: right;">61</p>	<p>1 Q That came directly to you?</p> <p>2 A Yes.</p> <p>3 Q And other than that e-mail would this</p> <p>4 be the -- this culmination of the investigative</p> <p>5 process, this is the document that you saw and</p> <p>6 that you relied upon?</p> <p>7 A That -- well, again, I don't remember</p> <p>8 seeing this document, but, you know, based upon</p> <p>9 what we've talked about, this is, you know, a</p> <p>10 reasonable summary of what was presented at the</p> <p>11 review board.</p> <p>12 Q Did anyone during the time that this</p> <p>13 was being looked into by Team Relations or</p> <p>14 someone else -- did anyone from Team Relations</p> <p>15 or Mr. Prater himself discuss this with you?</p> <p>16 A Yes.</p> <p>17 Q And can you recall the substance of</p> <p>18 those discussions?</p> <p>19 A Very -- I mean, just very basic, very</p> <p>20 simple that a member of Production Management</p> <p>21 found Mr. Dees asleep up on the third level in</p> <p>22 front of a cabinet and -- you know, at the</p> <p>23 middle of the night found him asleep up there.</p> <p style="text-align: right;">63</p>
<p>1 A No, it would not be an unusual place</p> <p>2 for him to be.</p> <p>3 Q Okay. When this whole situation</p> <p>4 occurred, did you ever discuss this directly</p> <p>5 with Mr. Dees?</p> <p>6 A No.</p> <p>7 Q Are you aware of who did discuss it</p> <p>8 directly with Mr. Dees?</p> <p>9 A Not specifically. I know it was</p> <p>10 during -- turned over to Team Relations for an</p> <p>11 investigation.</p> <p>12 Q Does this memo at Bates number 33</p> <p>13 included in Exhibit 9 -- is this the only</p> <p>14 document that you saw with respect to this</p> <p>15 incident?</p> <p>16 MR. JOHNSON: Object to the form.</p> <p>17 Q I'll represent to you that a number</p> <p>18 of -- that a couple of people were questioned</p> <p>19 and that there are written statements and there</p> <p>20 are e-mails that went back and forth. Did you</p> <p>21 see any of that?</p> <p>22 A I saw one e-mail. I remember seeing</p> <p>23 one e-mail.</p> <p style="text-align: right;">62</p>	<p>1 Q Okay. If you would, flip over two</p> <p>2 documents to Bates number 35. Is this the</p> <p>3 e-mail that you saw?</p> <p>4 A Yes.</p> <p>5 Q This appears to be an e-mail from --</p> <p>6 well, I guess it's from Mr. Prater to you.</p> <p>7 A Uh-huh.</p> <p>8 Q And it looks like Mr. Clevenger also</p> <p>9 sent it to you?</p> <p>10 A (Witness nods head.)</p> <p>11 Q I think there actually are two copies</p> <p>12 of this in here.</p> <p>13 A Well, this would have been -- this</p> <p>14 particular one was from me to Rob.</p> <p>15 Q Oh, I'm sorry. The top address is from</p> <p>16 you to Mr. Clevenger. So Mr. Prater sent this</p> <p>17 to you?</p> <p>18 A Yes.</p> <p>19 Q If you look at the subject line in</p> <p>20 Mr. Prater's transmission to you it says Leon</p> <p>21 Deez, and he spelled Dees D-E-E-Z. Are you</p> <p>22 familiar with why he might have done that?</p> <p>23 A No.</p> <p style="text-align: right;">64</p>

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<p>1 Q You think he might have not known how 2 his employee's names were spelled? 3 A Could be or maybe, you know, just -- I 4 don't know. 5 Q Are you aware that the misspelling of 6 Mr. Dees name was kind of a running joke in 7 the -- 8 A No. 9 Q -- within the group? 10 A No. 11 Q If you would, flip over one page to 12 Bates number 36. Have you ever seen this 13 document? 14 A No, not that I can recall. 15 Q Let me show you what's marked as 16 Plaintiff's Exhibit 13. Have you ever seen 17 that? 18 A I do not recall seeing this. 19 Q As we learned earlier today from 20 Mr. Brookshire that is a transcription by 21 Mr. William Ware of what Mr. Brookshire told him 22 happened that evening. 23 A Okay.</p>	<p>1 supervisor and a member of Team Relations. I 2 assume that Mr. Ware is in Team Relations? 3 A Yes, sir. 4 Q So all we have of that interview is, 5 one, what Mr. Ware apparently has written down 6 in this document and, two, what Mr. Prater sent 7 up in the e-mail that is at Bates number 35 that 8 appears to be a summary of that same interview. 9 But you don't think it's unusual that the person 10 accused is not allowed to write his own 11 statement? 12 MR. JOHNSON: Object to the form. 13 A No. 14 Q Look at Bates number 35. Do you still 15 have that? That's the e-mail -- 16 A Uh-huh. 17 Q -- from Mr. Prater to you. Down the 18 third to the last line about halfway across the 19 page the sentence begins, based on this 20 conversation, I feel that even if he were not 21 sleeping that he doesn't care enough about his 22 job to prevent anyone from thinking he was 23 sleeping. John, my recommendation, as hard as</p>
<p>1 Q And apparently it took two different 2 sessions to get it all down. Mr. Brookshire 3 indicated that was his signature on the bottom 4 of both pages. You've never seen that? 5 A No, not that I recall. 6 Q Would you have any opinion on whether 7 or not it would be unusual for someone to 8 transcribe what somebody said rather than ask 9 them to just write a statement? 10 MR. JOHNSON: Object to the form. 11 A No, it's not unusual. 12 Q Would it seem unusual to you that 13 Mr. Dees was never asked to write a statement? 14 MR. JOHNSON: Object to the form. 15 A I don't know if he was interviewed or 16 not. 17 Q Well, if you would, look at Plaintiff's 18 Exhibit 9 and flip back to Bates number 36. 19 A (Witness complied.) Okay. 20 Q Under the subject line -- 21 A Interview with Leon Dees, William Ware 22 and Greg Prater. Okay. 23 Q So apparently he was interviewed by his</p>	<p>1 it is for me to say, termination, Greg. 2 When you concurred in the meeting, the 3 review board meeting, to terminate him, did you 4 place some of your reliance on the 5 recommendation of Mr. Dees' supervisor? 6 A No. 7 Q Was he not asked to provide a 8 recommendation? 9 A It's not really his authority to 10 terminate somebody. 11 Q Well, if it was his authority, he would 12 have fired him. Here he's just making a 13 recommendation. My question was, was he asked 14 to make this recommendation, or did he just 15 offer it? 16 A He volunteered it. He was not asked. 17 Q So do you think Mr. Prater was just 18 confused about whether or not he had the 19 authority to make a recommendation? 20 A No. I think he just offered it. 21 Q Just offered it. If I were to tell you 22 that Mr. Prater has said that you told him to 23 get Dees, what would you say to that?</p>

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<p>1 A I have absolutely no recollection of</p> <p>2 ever saying that to Greg.</p> <p>3 Q Would it surprise you to learn that he</p> <p>4 claims to have a tape-recording of that</p> <p>5 conversation?</p> <p>6 MR. JOHNSON: Object to the form.</p> <p>7 A I have no idea what he has.</p> <p>8 Q Flip over to Bates number 39 in</p> <p>9 Plaintiff's Exhibit 9. I take it you have seen</p> <p>10 this e-mail before?</p> <p>11 A Yes.</p> <p>12 Q The text of the substantive part of the</p> <p>13 e-mail -- absent all the forwarding around --</p> <p>14 says Rob, Greg P. -- I assume that's Prater --</p> <p>15 and I met with all the Team Members in question</p> <p>16 about Leon leaving for lunch while the lift was</p> <p>17 down. We came to the consensus that a</p> <p>18 Discussion Planner is needed for the Team</p> <p>19 Members who left to go to lunch while the lift</p> <p>20 was down. That's Shane, Drake, and Leon. TMs</p> <p>21 performing the repair should have waited until</p> <p>22 help arrived to take over the repair. Team</p> <p>23 Leader and Leon are not on speaking terms. Team</p> <p style="text-align: right;">69</p>	<p>1 a general disagreement between them.</p> <p>2 Q Okay. Were you ever told -- and let's</p> <p>3 just clarify the context of this document we</p> <p>4 were just discussing. This is a situation where</p> <p>5 the lift was down?</p> <p>6 A Uh-huh. Yes.</p> <p>7 Q And Leon's team -- Mr. Archer,</p> <p>8 Mr. Barefoot, and Mr. Dees -- were working on</p> <p>9 the lift, lunchtime rolled around. As I</p> <p>10 understand it, the other team was late coming</p> <p>11 back from lunch and they were getting ready to</p> <p>12 go to lunch. It was their lunchtime. And the</p> <p>13 accusation is that they left and went to lunch</p> <p>14 and left the lift down causing some additional</p> <p>15 production downtime. Is that the situation?</p> <p>16 A That's my understanding.</p> <p>17 Q Has anyone ever mentioned to you that</p> <p>18 Mr. Hughes was aware of this situation, that</p> <p>19 they had contacted him on his radio prior to</p> <p>20 leaving?</p> <p>21 A It was my understanding that they had</p> <p>22 not.</p> <p>23 Q Based on that e-mail only?</p> <p style="text-align: right;">71</p>
<p>1 Leader, does that mean Kevin Hughes?</p> <p>2 A Yes.</p> <p>3 Q Are not on speaking terms and it</p> <p>4 appears that he blew the incident out of</p> <p>5 proportion and he only singled Leon out for no</p> <p>6 apparent reason. What is that referring to?</p> <p>7 A I'm not...</p> <p>8 Q It seems to be referring to something</p> <p>9 that's not in this e-mail. The Discussion</p> <p>10 Planner was to deal with all three of them. But</p> <p>11 then it says the Team Leader and Leon are not on</p> <p>12 speaking terms and it appears that he blew the</p> <p>13 incident out of proportion and he only singled</p> <p>14 Leon out for no apparent reason. Do you know</p> <p>15 whether or not the other two got Discussion</p> <p>16 Planners?</p> <p>17 A I believe all three of them did.</p> <p>18 Q So are you, then, not aware of what</p> <p>19 that sentence means?</p> <p>20 A I'm not sure if there was a problem</p> <p>21 between Kevin -- or specific problem between</p> <p>22 Kevin and Leon. You know, I don't know really</p> <p>23 if that refers to a particular incident or just</p> <p style="text-align: right;">70</p>	<p>1 A I can't remember if it's based on this</p> <p>2 e-mail or just, you know, a description of the</p> <p>3 events.</p> <p>4 Q I asked you earlier about Mr. Dees</p> <p>5 coming to visit you and talking about his Guard</p> <p>6 obligation, the fact that Mr. Prater was</p> <p>7 demanding orders. Did Mr. Dees ever come to you</p> <p>8 and talk about Mr. Prater aside from that one</p> <p>9 meeting we discussed?</p> <p>10 MR. JOHNSON: Object to the form.</p> <p>11 A I can only recall, you know, one</p> <p>12 meeting with Mr. Dees.</p> <p>13 Q Just that one meeting?</p> <p>14 A Yes.</p> <p>15 Q What about any of his coworkers? Did</p> <p>16 they ever come to you and discuss Mr. Prater</p> <p>17 with you?</p> <p>18 A I've had discussions with other Team</p> <p>19 Members in Stamping, complaints about the way</p> <p>20 the shop was run, yes.</p> <p>21 Q Did any of these comments -- were any</p> <p>22 of those comments consistent with anything</p> <p>23 Mr. Dees told you, or were they about different</p> <p style="text-align: right;">72</p>

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<p>1 topics?</p> <p>2 A Mostly about different topics. There</p> <p>3 was nothing that I can recall concerning</p> <p>4 Mr. Dees in any of these other conversations.</p> <p>5 Q Mr. Dees testified last week that a few</p> <p>6 minutes before Mr. Brookshire came upstairs and</p> <p>7 allegedly found him sleeping that he and</p> <p>8 Mr. Archer were there together on that platform</p> <p>9 and that they saw Mr. Brookshire and Mr. Hughes</p> <p>10 down below. Were you aware of that?</p> <p>11 A No.</p> <p>12 MR. JOHNSON: Is the question was he</p> <p>13 aware of that testimony or that --</p> <p>14 Q Fair point. Let me -- that was a bad</p> <p>15 question. Okay. Were you aware that Mr. Archer</p> <p>16 was with Mr. Dees a few minutes prior to</p> <p>17 Mr. Brookshire allegedly finding Mr. Dees</p> <p>18 asleep?</p> <p>19 MR. JOHNSON: Object to the form.</p> <p>20 A I have no knowledge of that.</p> <p>21 Q Are you aware of whether or not</p> <p>22 Mr. Archer was questioned about the events that</p> <p>23 occurred that evening that Mr. Brookshire found</p> <p style="text-align: right;">73</p>	<p>1 I understand that there's a personnel file and a</p> <p>2 Team Relations file. Are you familiar with how</p> <p>3 they keep those records?</p> <p>4 A No.</p> <p>5 Q No. Let me give this to you and ask</p> <p>6 you to flip to the little tabbed page there.</p> <p>7 A (Witness complied.)</p> <p>8 Q And for the Record, can you give us the</p> <p>9 Bates number on that document?</p> <p>10 A 00154.</p> <p>11 Q 154. And tell us what that is?</p> <p>12 A It's titled Acknowledgment of Ethics</p> <p>13 Guidelines.</p> <p>14 Q And that appears to be a two-page</p> <p>15 policy; is that correct?</p> <p>16 A Yes.</p> <p>17 Q Have you signed a document like that?</p> <p>18 A I don't recall specifically if it's in</p> <p>19 my packet and I signed it, then I did.</p> <p>20 Q Does Hyundai have what many</p> <p>21 corporations commonly refer to as a Code of</p> <p>22 Conduct or Code of Ethics?</p> <p>23 A Yes.</p> <p style="text-align: right;">75</p>
<p>1 him asleep?</p> <p>2 A I have no knowledge of that.</p> <p>3 Q Are you aware of whether or not</p> <p>4 Mr. Dees' Team Members told Mr. Prater if</p> <p>5 Mr. Dees was fired they would walk out?</p> <p>6 A I don't recall any specific allegation</p> <p>7 like that.</p> <p>8 Q Was, in fact, Mr. Prater moved to some</p> <p>9 other department for some period of time?</p> <p>10 A No.</p> <p>11 Q He was never moved out of Stamping</p> <p>12 Maintenance?</p> <p>13 A No.</p> <p>14 Q I'm going to mark what's going to be</p> <p>15 Exhibit 18.</p> <p>16</p> <p>17 (Whereupon, Plaintiff's Exhibit</p> <p>18 Number 18 was marked for identification</p> <p>19 and copy of same is attached hereto.)</p> <p>20</p> <p>21 Q I'm going to show this to you and</p> <p>22 represent to you that this is Mr. Prater's</p> <p>23 personnel file I believe is what that would be.</p> <p style="text-align: right;">74</p>	<p>1 Q And would this be an acknowledgement</p> <p>2 that an employee -- in this case, Mr. Prater --</p> <p>3 received or was made available a copy of that</p> <p>4 Code of Conduct or Ethics and reviewed it and</p> <p>5 has knowledge his receipt and compliance of</p> <p>6 that?</p> <p>7 A I think you'd have to read this. All</p> <p>8 it says here is that he acknowledges that he's</p> <p>9 read this and understands it. I don't know if</p> <p>10 that -- if you're referring to anything else --</p> <p>11 Q No. What I'm asking is, did you also</p> <p>12 read and sign a document like those two 154 and</p> <p>13 155?</p> <p>14 A I don't remember. If it's in my</p> <p>15 personnel file, I did. If it's not, I don't</p> <p>16 remember -- I can't recall if I did or not.</p> <p>17 Q I'll represent to you that's the only</p> <p>18 one of those I've seen.</p> <p>19 A Yeah. I can't recall if I did or not.</p> <p>20</p> <p>21 (Whereupon, Plaintiff's Exhibit</p> <p>22 Number 19 was marked for identification</p> <p>23 and copy of same is attached hereto.)</p> <p style="text-align: right;">76</p>

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<p>1 2 Q This, I believe, is Mr. Prater's Team 3 Relations file. And I believe that the front 4 page is a summary of the Discussion Planners 5 that follow. 6 A Okay. 7 Q And those Discussion Planners seem to 8 run in the same vein. And what I mean by that 9 is there were performance issues with 10 Mr. Prater's performance, Discussion Planners 11 were prepared relating to those, Mr. Prater's 12 comments always seem to be it's somebody else's 13 fault. I assume you were the guy that went over 14 those with him -- 15 A Yes. 16 Q -- as a supervisor? 17 A Yes. 18 Q Would you agree with the statement I 19 just made? 20 MR. JOHNSON: Object to the form. 21 A No, no. 22 Q Let me see. Who are Spencer and Amos? 23 A Specialists in the Stamping Maintenance</p>	<p>1 problem; is that correct? 2 A Yes. 3 Q Then in the next Discussion Planner 4 Bates numbered 171, Mr. Prater's department is 5 experience significant downtime and there's a 6 side issue about communication problems between 7 Mr. Prater and his engineers and Team Members. 8 So that was the topic of that Discussion 9 Planner. And he blamed this situation on the 10 engineers and the Team Members. It wasn't his 11 fault. Is that a correct assessment of what the 12 document says? 13 MR. JOHNSON: Object to the form. 14 A I'd have to read the document to be 15 sure. 16 Q Okay. 17 A Yes, in that particular one. 18 Q The next one, Discussion Planner, Bates 19 number 173, actually relates to Mr. Dees 20 complaining that Mr. Prater was not treating him 21 fairly concerning his military duty. He accused 22 Greg of requiring written orders when not 23 required and assigning him hard work as a form</p>
<p>1 team. 2 Q Specialists? 3 A Engineers. 4 Q Oh, engineers. And that's different 5 from like Mr. Dees' position? 6 A Yes, sir. 7 Q How are they different? 8 A They -- I mean, they -- they're 9 different positions within the company. 10 Maintenance Team Members are -- you would call 11 hourly technicians. The engineers are 12 salaried. It's a different responsibility, 13 different position. 14 Q Okay. In this particular Discussion 15 Planner basically the topic is it's his 16 responsibility to clearly communicate job 17 requirements to engineers, the specialists? 18 A Yes. 19 Q And that was the issue in this 20 Discussion Planner. And Mr. Prater's response 21 was he blamed the situation on the engineers and 22 Mr. Mun. So in at least that particular 23 instance he blamed somebody else for the</p>	<p>1 of punishment. Is this the same time period 2 where you would have had the meeting with 3 Mr. Dees, or is this some later time period? 4 A No. I believe it's the same time 5 period. 6 Q You believe it's the same time period? 7 A Yes. 8 Q Well, as I understood your 9 characterization of this incident earlier, it 10 didn't seem to you to be that big of a deal. 11 Why did it result in a Discussion Planner? 12 A Discussion Planners aren't 13 necessarily -- when you say that big of a deal, 14 they're to make sure and document in a form a 15 situation that is of concern. 16 Q They are step 1 in the corrective 17 action process; correct? 18 A No, they're not. 19 Q They're not. What's step 1? 20 A I mean, there's a step 1, 2, 3, 4. 21 They are, I guess you'd say, a pre-step 1. 22 MR. JOHNSON: Can we have a copy of 23 that if we're going to be talking about it?</p>

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<p>1 MR. SPORT: Yeah. Absolutely. I</p> <p>2 apologize. I just didn't have an extra copy of</p> <p>3 that one.</p> <p>4 Q So we're looking at Bates number 173</p> <p>5 here and the last section at the bottom of that</p> <p>6 page is entitled Background Information. This</p> <p>7 paragraph reads, Leon serves in the Guard and</p> <p>8 fulfills his duties on the weekends and in the</p> <p>9 summers. Greg feels that Leon is taking</p> <p>10 advantage of his duty to get out of weekend work</p> <p>11 and that he is a disruption in the team. Greg</p> <p>12 has assigned Leon and others to unpopular jobs</p> <p>13 within the shop, and Leon believes this is a</p> <p>14 form of punishment. The main problem is that</p> <p>15 Greg has a poor relationship with this Team</p> <p>16 Members, which leads to this kind of</p> <p>17 miscommunication. I take it that's your</p> <p>18 assessment based on your conversation with</p> <p>19 Mr. Prater?</p> <p>20 A Yes.</p> <p>21 Q And then if you'll flip over to Bates</p> <p>22 number 174, Discussion Summary, met with Greg</p> <p>23 for a brief discussion of the problem. He</p> <p style="text-align: right;">81</p>	<p>1 Discussion Planner?</p> <p>2 A Yes, sir.</p> <p>3 Q That is a -- is it a secondary</p> <p>4 addressing of problems that have already been</p> <p>5 addressed and not corrected?</p> <p>6 A Maybe not specifically a problem that</p> <p>7 previously occurred, but something in the same</p> <p>8 area, such as a performance issue. It may not</p> <p>9 be the same performance issue but --</p> <p>10 Q Maybe a new problem but --</p> <p>11 A It's under the umbrella of a</p> <p>12 performance issue.</p> <p>13</p> <p>14 (Whereupon, Plaintiff's Exhibit</p> <p>15 Number 20 was marked for identification</p> <p>16 and copy of same is attached hereto.)</p> <p>17</p> <p>18 Q Okay. I'm going to mark as Exhibit</p> <p>19 Number 20 the supplement that we got from</p> <p>20 Mr. Johnson today relating to Mr. Prater's</p> <p>21 personnel file, and I believe it is these</p> <p>22 documents.</p> <p>23 MR. SPORT: This is the only copy that</p> <p style="text-align: right;">83</p>
<p>1 blamed the situation on Leon. So there again,</p> <p>2 he's blaming somebody else for his problem?</p> <p>3 MR. JOHNSON: Object to the form.</p> <p>4 Q Correct?</p> <p>5 A He blamed Leon for this situation, yes.</p> <p>6 Q For that situation. Okay. If you</p> <p>7 would, flip over to the next page, 175.</p> <p>8 A (Witness complied.)</p> <p>9 Q Corrective action phase 2. Well, if</p> <p>10 this is phase 2 weren't the Discussion Planners</p> <p>11 phase 1?</p> <p>12 A You don't have to go phase 1, 2, 3.</p> <p>13 Q Oh, you don't?</p> <p>14 A No.</p> <p>15 Q You don't have to follow the corrective</p> <p>16 action plan?</p> <p>17 A No, not specifically. I mean, you can,</p> <p>18 depending upon the discussion and severity and</p> <p>19 what was happened before, you know, pick</p> <p>20 whatever -- working with Team Relations you can</p> <p>21 choose whatever is the appropriate level as far</p> <p>22 as this one needed a formal discussion.</p> <p>23 Q Okay. And is that more serious than a</p> <p style="text-align: right;">82</p>	<p>1 I have. Do you have a copy with you, Matt?</p> <p>2 MR. JOHNSON: Yeah.</p> <p>3 MR. SPORT: And I'll just read in for</p> <p>4 the Record. These are Bates numbered documents</p> <p>5 326 through 331.</p> <p>6 Q And these documents relate to primarily</p> <p>7 his out processing after he terminated.</p> <p>8 A Okay.</p> <p>9 Q I want you to take a look at those. If</p> <p>10 you would look at Bates number 329.</p> <p>11 A Okay.</p> <p>12 Q It indicates Mr. Prater -- this is a</p> <p>13 document entitled Exit Interview Questionnaire</p> <p>14 and Checklist. It indicates that the last day</p> <p>15 Mr. Prater worked was the day 14th of September</p> <p>16 of '07. Termination date, September 21st. And</p> <p>17 the second section under those two dates I just</p> <p>18 mentioned -- or the first section under that</p> <p>19 section is entitled What Prompted You to Seek</p> <p>20 Alternative Employment. And it appears that</p> <p>21 Mr. Prater has marked every box except one.</p> <p>22 A Okay.</p> <p>23 Q Including Koreans. Do you have any</p> <p style="text-align: right;">84</p>

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<p>1 idea what he's referring to there?</p> <p>2 MR. JOHNSON: Object to the form of the</p> <p>3 question.</p> <p>4 A I mean, I wasn't in on this interview,</p> <p>5 so I'm not sure.</p> <p>6 Q I understand. But do you have any</p> <p>7 knowledge of him being unhappy with the plant</p> <p>8 being owned by and run by Koreans?</p> <p>9 A Not owned and run by Koreans. I don't</p> <p>10 think that that was the issue.</p> <p>11 Q He didn't like working with Koreans?</p> <p>12 A No, I don't think that was the issue.</p> <p>13 I think the issue was just a difference in style</p> <p>14 between, you know, our parent company, which is</p> <p>15 HMC, and then HMMA, which are two different</p> <p>16 companies. It's just the HMC -- the</p> <p>17 coordinators have a certain business style that,</p> <p>18 you know, is the HMC style, and I think maybe he</p> <p>19 had some difficulty with that style of</p> <p>20 management.</p> <p>21 Q Would that be the harmonious style of</p> <p>22 management versus Mr. Prater's style of</p> <p>23 management?</p> <p style="text-align: right;">85</p>	<p>1 dotted line reporting responsibility? Primarily</p> <p>2 reports to you but Mr. Mun has input with</p> <p>3 respect to that one area?</p> <p>4 MR. JOHNSON: Object to the form.</p> <p>5 A That's one way of looking at it, yes.</p> <p>6 Q Well, I used that analogy because</p> <p>7 Ms. Warner used that analogy during her</p> <p>8 deposition, described a reporting relationship</p> <p>9 as a dotted line. So I thought that might be</p> <p>10 terminology within your company.</p> <p>11 Flip over to page 330. He basically</p> <p>12 declines to answer these questions. Would you</p> <p>13 have any knowledge of why he might decline to do</p> <p>14 that?</p> <p>15 MR. JOHNSON: Object to the form.</p> <p>16 A No, he never discussed that with me.</p> <p>17 Q When he decided to leave, what was your</p> <p>18 understanding of why that was?</p> <p>19 A My understanding was he got a better</p> <p>20 job.</p> <p>21 Q Got a better job. So no reason for him</p> <p>22 to be unhappy? He just got a better job? He</p> <p>23 could go home? He's from the area where he</p> <p style="text-align: right;">87</p>
<p>1 MR. JOHNSON: Object to the form.</p> <p>2 A I have no idea on that.</p> <p>3 Q He also marked quality of supervision</p> <p>4 as a reason that he was leaving.</p> <p>5 A Uh-huh.</p> <p>6 Q Is that a dig at you?</p> <p>7 A Could be. I don't know what he -- I</p> <p>8 didn't ask him about that.</p> <p>9 Q Did you tell him to quit or get quit?</p> <p>10 MR. JOHNSON: Object to the form.</p> <p>11 A No.</p> <p>12 Q It says -- up at the top it says</p> <p>13 supervisor, Duane Mun. Is that Mr. Mun?</p> <p>14 A Yes.</p> <p>15 Q Did he have any reporting</p> <p>16 responsibility to Mr. Mun as the coordinator?</p> <p>17 A As coordinator mostly on the -- like I</p> <p>18 say, the technical side, you know, technical</p> <p>19 issues with the presses, how the maintenance</p> <p>20 tasks are assigned, what task, what things are</p> <p>21 done. Mr. Mun is more of a technical</p> <p>22 coordinator.</p> <p>23 Q So that would be similar to like a</p> <p style="text-align: right;">86</p>	<p>1 returned to; is that correct?</p> <p>2 A Yes. And, again, as he explained to</p> <p>3 me, better company, back where he came from.</p> <p>4 MR. SPORT: Let's take just a short</p> <p>5 break.</p> <p>6</p> <p>7 (Whereupon, a brief recess was had in</p> <p>8 the proceeding.)</p> <p>9</p> <p>10 BY MR. SPORT:</p> <p>11 Q Mr. Applegate, do you recall a</p> <p>12 situation where a young lady was terminated for,</p> <p>13 in effect, doing a striptease on the Production</p> <p>14 floor?</p> <p>15 A Not --</p> <p>16 Q She was taking off her clothes in front</p> <p>17 of a group of people and...</p> <p>18 A I'm not being obtuse. Something sounds</p> <p>19 familiar about that, but I don't know any of the</p> <p>20 details.</p> <p>21 Q Well, it's a big plant. There's a</p> <p>22 couple, 3,000 people working out there, so I</p> <p>23 didn't know if that took place within your realm</p> <p style="text-align: right;">88</p>

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<p>1 of responsibility or not which is why I wanted 2 to ask you about it.</p> <p>3 A Again, I don't know any specifics about 4 it and I don't know that it was a striptease and 5 I don't know, you know, who the woman was. 6 There was something many, many, many, many 7 months ago where I heard someone had been 8 terminated. But, again, I'm not -- I don't know 9 the details I guess is what I'm saying.</p> <p>10 Q That did not occur within Stamping 11 Operations?</p> <p>12 A Not on the Maintenance side. I mean, 13 it wasn't anything in my area, the woman didn't 14 work for me.</p> <p>15 Q Well, we talked earlier -- and I 16 thought we established that Stamping was -- in 17 terms of geography was Stamping whether it was 18 Production or Maintenance; is that correct?</p> <p>19 A No. We never said that. As a matter 20 of fact, when you had said about Stamping 21 Production and Stamping Maintenance, those are 22 two separate, and I thought at the time we made 23 that clear that Stamping Maintenance is in my</p> <p style="text-align: right;">89</p>	<p>1 she was caught for want of a better word by 2 management through the use of videotape having 3 her on film, and that's why I wanted -- you 4 testified earlier that the only cameras in your 5 are were on the machines. And so I'm trying to 6 pinpoint where within the plant she was.</p> <p>7 A Okay. Well, and, again --</p> <p>8 MR. JOHNSON: Object to the form.</p> <p>9 A In answer to your previous question, 10 the only cameras I'm aware of are the ones that 11 are on the machines. You followed up and asked 12 if there were any security cameras, and I said 13 I'm not aware of any security cameras. The only 14 ones I know of are the ones that are focused the 15 on machines. Those are the only ones I look at.</p> <p>16 Q Did anyone, either within security or 17 HR or anyone else within the company, ever come 18 to you and indicate to you that Mr. Prater had 19 disconnected their coax cable to their cameras 20 or other equipment?</p> <p>21 A No.</p> <p>22 Q Okay. Mr. Brookshire earlier today 23 testified about an e-mail that either</p> <p style="text-align: right;">91</p>
<p>1 area but the other operations, like Production 2 and that type of thing are not.</p> <p>3 Q No, no, no. I know that you don't have 4 responsibility for them.</p> <p>5 A Right.</p> <p>6 Q I'm just talking about geographically 7 in the plant the maintenance occurs where the 8 operations occur?</p> <p>9 A Oh, yeah. Yes.</p> <p>10 Q That's what I'm talking about.</p> <p>11 A Okay.</p> <p>12 Q And I was asking you about that 13 situation with the young lady. I just wanted to 14 make sure that was not within the Stamping 15 area. If it had been, whether she worked for 16 you, you probably would have heard about it?</p> <p>17 MR. JOHNSON: Object to the form.</p> <p>18 Q Would you not think so?</p> <p>19 A I may have heard about it; may not have 20 paid any attention to it if it wasn't something 21 to do with Stamping Maintenance.</p> <p>22 Q The reason I asked that question is 23 we've heard testimony already in this case that</p> <p style="text-align: right;">90</p>	<p>1 distributed or referenced the publication of a 2 new policy relating to this whole Guard military 3 orders situation. Are you aware of that e-mail?</p> <p>4 A No.</p> <p>5 Q You're not aware of that e-mail?</p> <p>6 A (Witness shakes head.) No. And I 7 don't know what time frame that's -- you know, 8 as far as is this something that happened in the 9 last few days or the last few weeks.</p> <p>10 Q As I understood it, it would have been 11 sometime either during the relevant time period 12 from when Mr. Dees had had the first 13 conversation with you and the time Ms. Warner 14 testified about the confusion regarding how all 15 this should be handled and sometime after 16 Mr. Dees was terminated.</p> <p>17 A Yeah. I just don't recall that. I 18 thought you were talking about the last few 19 weeks.</p> <p>20 Q I didn't understand it to be the last 21 few weeks. Are you familiar with how any 22 revisions in policies or new policies are 23 communicated to employees?</p> <p style="text-align: right;">92</p>

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<p>1 A I know -- I know there's a team advisor 2 that goes out from our Team Relations people 3 that announces, you know, like if there's, you 4 know, policy changes to benefits or something 5 like that. I mean, that's one way I know that 6 changes --</p> <p>7 Q A team advisor meaning an individual? 8 A No. 9 Q Or that's -- 10 A It's just an e-mail. A document that's 11 posted. You know, it says, okay, we have new 12 open enrollment period for BlueCross 13 BlueShield. So for changes to those kinds of 14 policies there's a team advisor.</p> <p>15 Q And you're not aware of any team 16 advisor that would have been issued relating to 17 some clarification or revision relating to this 18 military policy? 19 A I don't recall. 20 Q Are you aware that Mr. Prater was 21 previously in the Guard? 22 A I didn't know which -- I can't recall 23 which branch of the military, but I knew he had</p> <p style="text-align: right;">93</p>	<p>1 make an assumption on what he should or 2 shouldn't know.</p> <p>3 Q Mr. Applegate, are you aware of any 4 violations of the Serious Misconduct Policy by 5 Mr. Brookshire? 6 MR. JOHNSON: Object to the form. 7 A I have no knowledge of that. 8 Q You're not aware if he has any type of 9 substance abuse problem? 10 A No, I have no knowledge of that. 11 Q Would you agree with me that harassment 12 relating to military service ought to be taken 13 as seriously as sexual harassment or racial 14 harassment? 15 MR. JOHNSON: Object to the form. 16 Q Assuming for the sake of argument that 17 it is harassment. 18 A Again, the details of the harassment, 19 that's a very broad statement. You know, if -- 20 details and specifics, it's hard to answer that 21 without knowing -- 22 Q Well, I haven't given you any facts. 23 A Right.</p> <p style="text-align: right;">95</p>
<p>1 some previous military experience or some 2 military experience. Guard, Reserve, I don't 3 know.</p> <p>4 Q If he had been in the Guard would you 5 not agree that he was probably familiar with how 6 the process of orders worked on -- for the drill 7 weekends every month? 8 MR. JOHNSON: Object to the form. 9 A I don't know how that all -- I've not 10 been in the Guard myself or Reserve. I don't 11 know from a Guard's standpoint or Reservist's 12 standpoint how that works.</p> <p>13 Q You haven't been in the Guard? 14 A Right. 15 Q Well, I'm asking you to assume that he 16 has been. 17 A Uh-huh. 18 Q So wouldn't you think that he would 19 understand how that process works? 20 MR. JOHNSON: Object to the form. 21 A I really don't -- I mean, I can't 22 comment on that. I don't know if he's in the 23 same branch, different branch. I'm not going to</p> <p style="text-align: right;">94</p>	<p>1 Q I'm just asking you to -- going back to 2 the harassment policy that we discussed earlier 3 that said actions, words, jokes, or comments 4 based on an individual's sex, race, ethnicity, 5 age, religion, or any other legally protected 6 characteristic will not be tolerated. Assuming 7 that military service is a protected class like 8 the others would you agree with me that 9 harassment based on that -- military service -- 10 should be investigated and taken as seriously as 11 sexual harassment, racial discrimination? 12 MR. JOHNSON: Object to the form. 13 A According to our policy, it should be 14 investigated. And I can't really comment on, 15 you know, the seriousness of one versus the 16 other.</p> <p>17 MR. SPORT: All right. That's it. 18 EXAMINATION 19 BY MR. JOHNSON: 20 Q Just a couple of things, 21 Mr. Applegate. After there was an incident 22 where Mr. Dees and Mr. Prater apparently had 23 some issues over how to handle a weekend leave</p> <p style="text-align: right;">96</p>

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<p>1 and you, as you testified, went to Team 2 Relations and then came back -- that situation. 3 You know what I'm talking about? 4 A Yes, sir. 5 Q Is it your testimony that after that 6 Mr. Dees did not come to you with any issues 7 related to his service? 8 A Correct. I don't recall any time after 9 that that the issue came up again. 10 Q And had he previously come to you with 11 any issues related to his service? 12 A Just that one time to my recollection 13 is all we discussed. 14 Q And during the discussion on that one 15 time did he suggest that Mr. Prater was 16 harassing him because of his service, or was it 17 simply and issue of how to handle a situation? 18 A I don't know. I don't remember him 19 ever using the term harassment. I know there 20 was a disagreement on how and what was required 21 to be submitted. 22 Q Did you feel there was any potential 23 for harassment at that time?</p> <p style="text-align: right;">97</p>	<p>1 your business practice. There was some 2 discussion of daily reports earlier? 3 A Yes. 4 Q Who completes those daily reports? 5 A The Team Members are to complete daily 6 reports of what they do on the floor. 7 Q And so would Mr. Dees have been one of 8 the people actually completing the daily 9 reports? 10 A He should have been one of the people 11 completing the daily reports. 12 Q From the time that you were informed 13 that Jim Brookshire alleges he saw Mr. Dees 14 sleeping up on the third level mezzanine, did 15 you ever become aware of any evidence to suggest 16 that he was not sleeping up there? 17 A No. 18 Q During the period in which you sat 19 in -- 20 A Let me go back to that. In the 21 discussion -- I think maybe one of the 22 e-mails -- it was reported that Mr. Dees said he 23 was on the cell phone, not sleeping. But that's</p> <p style="text-align: right;">99</p>
<p>1 A No. My understanding was just a, you 2 know, clarification of the company policy and 3 the legal requirement. 4 Q Okay. Now, there was some discussion 5 about work down in the pit. I think your 6 testimony was that Mr. Dees had complained to 7 you about doing the work in the pit; is that 8 correct? 9 A Yes. 10 Q Okay. More specifically was his 11 complaint about actually having to do the work 12 period, or was his complaint that he had to do 13 it too often or more than his coworkers? 14 A To my recollection a little bit of 15 both. I don't think he liked doing the work and 16 then he thought he was doing it more often than 17 other Team Members. 18 Q Was there any evidence that he was, in 19 fact, doing it more often than his Team Members 20 to your knowledge? 21 A No. To my knowledge he wasn't. 22 Everyone was required to do it. 23 Q And just for sake of me understanding</p> <p style="text-align: right;">98</p>	<p>1 the only -- that's the only thing that I 2 understood. 3 Q Okay. Was there any evidence from 4 anybody other than Mr. Dees or any statements by 5 anybody else that would have made you think that 6 he was not sleeping? 7 A No. 8 Q During the discussion with the 9 termination committee was the fact that Mr. Dees 10 was in the service or a member of the Guard or 11 that he did Guard duty on the weekends or at 12 various points in the year ever raised as a 13 motivating factor or reason to terminate him? 14 A No, that never came up. 15 MR. JOHNSON: Let's take a two-second 16 break. I think I'm done. 17 18 (Whereupon, a brief recess was had in 19 the proceeding.) 20 21 MR. JOHNSON: That's all. 22 FURTHER EXAMINATION 23 BY MR. SPORT:</p> <p style="text-align: right;">100</p>

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<p>1 Q Mr. Applegate, I'm going to show you 2 again what we've previously marked as 3 Plaintiff's Exhibit 19, which is, as I 4 understand it, Mr. Prater's Team Relations 5 file. I'm going to show you again document 6 Bates number 173, which is the Discussion 7 Planner relating to Mr. Leon Dees. When I asked 8 about you this document earlier, you indicated 9 that this was the same occurrence of when he 10 came to visit you and had the one discussion 11 that you've said that he had with you, and it's 12 now been characterized as merely a question, not 13 that big a deal. But the Discussion Planner 14 says in the situation block on 11-15-06, Leon 15 from the Press Shop complained that Greg was not 16 treating him fairly concerning his military 17 duty. He accused Greg of requiring written 18 orders when not required and assigning him hard 19 work as a form of punishment. I discussed the 20 situation with Greg and Leon. That seems like 21 he's accusing Mr. Prater of harassing him. 22 MR. JOHNSON: Object to the form. 23 A Again, you know, as I state in there,</p> <p style="text-align: right;">101</p>	<p>1 background section there. We discussed it 2 earlier. Leon serves in the Guard and fulfills 3 his duty on weekends and in the summers. Greg 4 feels that Leon is taking advantage of his duty 5 to get out of weekend work and that he's a 6 disruption to the team. Does that lend some 7 credence to what Mr. Dees was complaining of? 8 MR. JOHNSON: Object to the form. 9 A No. Again, I interpret that more as a 10 communication problem again within the realm of 11 the concerns that he had about Greg as far as 12 inability to communicate. 13 Q So if a female employee had come to you 14 and told you that Mr. Prater was pinching her on 15 the behind would that have been a communication 16 problem? 17 MR. JOHNSON: Object to the form. 18 A That's a different situation. 19 Q Mr. Johnson asked you a question 20 basically to the point of were you aware of 21 anyone providing any evidence that Mr. Dees was 22 not asleep, and you indicated that the only 23 thing that you had heard was that Mr. Dees</p> <p style="text-align: right;">103</p>
<p>1 the purpose of that Discussion Planner is to 2 make sure Greg understands that he needs to 3 communicate better with Team Members and, you 4 know, perform his function better. At that 5 time, you know, the term harassment or was he 6 being harassed or that really didn't come up. 7 But, you know, it was to clarify a situation 8 that was a poor communication. 9 Q Well, I understand that you didn't 10 consider it harassment because you say this is 11 another example of a communication problem in 12 Press Maintenance. But it sounds like Mr. Dees 13 considered it harassment and was communicating 14 the fact to you, and, in fact, it resulted in 15 this Discussion Planner. 16 MR. JOHNSON: Object to the form. 17 A The Discussion Planner was for 18 communication. And Greg, if you look through 19 the Discussion Planners, had communication 20 difficulties, and that was the purpose of the 21 Discussion Planners. 22 Q All right. Let me hand that to you and 23 look at the paragraph written under the</p> <p style="text-align: right;">102</p>	<p>1 claimed that he was on the cell phone. I think, 2 in fact, he claimed he was trying to text 3 message his daughter because of the weather. I 4 asked you earlier do you know whether or not 5 Mr. Archer was questioned about this. I believe 6 you indicated that -- 7 A I didn't recall that he was. 8 Q I have no evidence that he was either, 9 but I just wanted to confirm your earlier answer 10 to me. 11 In the review board meeting that you 12 attended, one of the things that you said that 13 that board did was looked at -- and Ms. Warner 14 confirmed this by the way -- was looked at 15 similar occurrences of this type of behavior and 16 determined how those were handled. 17 A Yes. 18 Q Do you recall the situation or 19 situations that were reviewed in the review 20 board meeting relating to Mr. Dees? 21 A The one that I recall of a similar type 22 of a situation was a Team Member in the Engine 23 Shop who had, like Mr. Dees, gone out of the way</p> <p style="text-align: right;">104</p>

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<p>1 create a little area to sleep in an 2 out-of-the-way spot and was caught by management 3 sleeping, and then based on that was terminated. 4 Q And I believe that gentlemen was named 5 Ontario King? 6 A That, I don't know. I have no 7 knowledge of that from Team Relations because 8 they didn't share that with he. 9 Q Are you aware of any of the facts of 10 that situation? 11 A No. That wasn't in -- he wasn't a 12 report to me. And other than just the very 13 brief comparison, I don't know. 14 Q We can pull out documents, but for sake 15 of expediency I'll represent to Mr. King had, in 16 fact, gone and made a bed somewhere. He was 17 discovered sleeping. He told the individual 18 that discovered him that he was -- that he had 19 gone there to take a nap during his lunch and 20 had inadvertently slept over. He had gone to a 21 late lunch and slept over. That statement to 22 the individual that found him was refuted by one 23 of Mr. King's coworkers, and those are the 105 </p>	<p>1 that came up, it was, you know, these are like 2 situations. 3 Q So the details of what happened with 4 Mr. King were not discussed in that meeting? 5 A I do not recall if the details --to 6 what extent the details were discussed. My 7 recollection was very -- like I say, very 8 superficial. You know, two instances, Team 9 Member intentionally off somewhere sleeping, and 10 this is the appropriate response. 11 MR. SPORT: That's all I have got. 12 13 14 15 16 17 18 19 20 21 22 23 FURTHER DEPONENT SAITH NOT 107 </p>
<p>1 circumstances under which he was terminated. 2 There was another individual, a third-party, 3 that provided evidence that refuted what 4 Mr. King had said. Is that situation similar to 5 this situation? 6 MR. JOHNSON: Object to the form. 7 Q Here it seems we have Mr. Brookshire 8 says one thing; Mr. Dees says another thing. 9 There's nobody else providing any evidence. 10 A Again, when I went to the review board 11 or termination review board, these were like 12 situations in that a Team Member was discovered 13 sleeping and intentionally had gone to some area 14 with the intention to sleep and that, you know, 15 based on that the appropriate response was 16 termination. 17 Q So the fact that there was other 18 evidence that proved that the Team Member in 19 that case was not telling the truth, that would 20 have had no bearing? 21 MR. JOHNSON: Object to the form. 22 A Whether it has bearing or not, I don't 23 know. But in -- you know, my recollection when 106 </p>	<p>1 C E R T I F I C A T E 2 3 STATE OF ALABAMA) 4 5 COUNTY OF AUTAUGA) 6 7 8 I hereby certify that the above and 9 foregoing deposition was taken down by me in 10 stenotype, and the questions and answers thereto 11 were transcribed by means of computer-aided 12 transcription, and that the foregoing represents 13 a true and accurate transcript of the testimony 14 given by said witness upon said hearing. 15 I further certify that I am neither of 16 counsel, nor kin to the parties to the action, 17 nor am I in anywise interested in the result of 18 said cause. 19 20 21 22 23 STACEY L. JOHNSON, Commissioner Certified Court Reporter, ACCR#: 386 - Expires 09-30-08 Commission Expires 06-22-2011 108 </p>

(FILED UNDER SEAL)

Plaintiff's Exhibit 17 to John Applegate's Deposition

(John Applegate's Personnel File)

(FILED UNDER SEAL)

Plaintiff's Exhibit 18 to John Applegate's Deposition

(Greg Prater's Personnel File)

(FILED UNDER SEAL)

Plaintiff's Exhibit 19 to John Applegate's Deposition

(Greg Prater's Team Relations File)

(FILED UNDER SEAL)

Plaintiff's Exhibit 20 to John Applegate's Deposition

(Supplemental to Greg Prater's Personnel File)

WENDY SUSAN WARNER

1	IN THE UNITED STATES DISTRICT COURT	1	INDEX
2	FOR THE MIDDLE DISTRICT OF ALABAMA	2	EXAMINATION BY: PAGE NUMBER
3	NORTHERN DIVISION	3	Mr. Kilborn 6
4		4	
5	CIVIL ACTION NO.: 2:07-00306-MHT-CSC	5	EXHIBITS:
6		6	Plaintiff's Exhibit 1 81
7	JERRY LEON DEES, JR.,	7	(Team relations investigation file - blue
8	Plaintiff,	8	folder)
9	vs	9	Plaintiff's Exhibit 2 83
10	HYUNDAI MOTOR MANUFACTURING	10	(Team relations investigation file - green
11	ALABAMA, L.L.C. and HYUNDAI MOTOR	11	folder)
12	AMERICA, INC.,	12	Plaintiff's Exhibit 3 84
13	Defendants.	13	(Team relations peer review file)
14		14	Plaintiff's Exhibit 4 85
15	STIPULATIONS	15	(Mr. Dees' personnel file)
16		16	Plaintiff's Exhibit 5 85
17	IT IS STIPULATED AND AGREED by and between	17	(Notes, interview guide)
18	the parties, through their respective counsel, that the	18	Plaintiff's Exhibit 6 95
19	deposition of WENDY SUSAN WARNER may be taken before	19	(Declaration)
20	DONNA E. HENDERSON, CSR, Commissioner, at the law	20	Plaintiff's Exhibit 7 98
21	offices of Copeland, Franco, Screws & Gill, P.A., 444	21	(Defendant, HMMA, response objections to
22	South Perry Street, Montgomery, Alabama, on the 15th	22	Rule 30(b)(5) Exhibit A request attached
23	day of November, 2007.	23	to amended deposition notice)
			3
1	IT IS FURTHER STIPULATED AND AGREED that the	1	Plaintiff's Exhibit 8 121
2	signature to and the reading of the deposition by the	2	(Ms. Warner's personnel file)
3	witness is not waived, the deposition to have the same	3	Plaintiff's Exhibit 9 190
4	force and effect as if full compliance had been had	4	(Hyundai file with Bates Numbers)
5	with all laws and rules of Court relating to the taking	5	Plaintiff's Exhibit 10 299
6	of depositions.	6	(Scoring Matrix)
7	IT IS FURTHER STIPULATED AND AGREED that it	7	Plaintiff's Exhibit 11 300
8	shall not be necessary for any objections to be made by	8	(Scoring Matrix)
9	counsel to any questions except as to form or leading	9	Plaintiff's Exhibit 12 301
10	questions, and that counsel for the parties may make	10	(Letter to Leon Dees from Wendy Warner
11	objections and assign grounds at the time of the trial	11	dated 3-7-07)
12	or at the time said deposition is offered in evidence	12	
13	or prior thereto.	13	
14	IT IS FURTHER STIPULATED AND AGREED that the	14	
15	notice of filing of the deposition by the Commissioner	15	
16	is waived.	16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
	2		4

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<p>1 APPEARANCES</p> <p>2</p> <p>3 KILBORN & ROEBUCK, by Mr. Vincent F. Kilborn</p> <p>4 III and Mr. Jeffrey R. Sport, 1610 Old Government</p> <p>5 Street, Post Office Box 66710, Mobile, Alabama 36660,</p> <p>6 appearing on behalf of the Plaintiff, Jerry Leon Dees,</p> <p>7 Jr.</p> <p>8</p> <p>9 KILBORN, ROEBUCK & McDONALD, by Mr. David A.</p> <p>10 McDonald, Post Office Box 832, Mobile, Alabama 36601,</p> <p>11 appearing on behalf of the Plaintiff, Jerry Leon Dees,</p> <p>12 Jr.</p> <p>13</p> <p>14 OGLETREE, DEAKINS, NASH, SMOAK & STEWART</p> <p>15 P.C., by Mr. J. Trent Scofield, One Federal Plaza, 1819</p> <p>16 Fifth Avenue North, Suite 1000, Birmingham, Alabama</p> <p>17 35203, appearing on behalf of the Defendants, Hyundai</p> <p>18 Motor Manufacturing Alabama, L.L.C. and Hyundai Motor</p> <p>19 America, Inc.</p> <p>20</p> <p>21 Also present: Christopher N. Smith, Corporate Counsel</p> <p>22 for Hyundai Motor Manufacturing Alabama</p> <p>23</p> <p>5</p>	<p>1 Q And where do you live, Ms. Warner?</p> <p>2 A I live in [REDACTED], Alabama, [REDACTED]</p> <p>3 [REDACTED].</p> <p>4 Q And how long have you lived there?</p> <p>5 A Four years and six months.</p> <p>6 Q Previous to that, did you live in Montgomery</p> <p>7 or another city?</p> <p>8 A Another city.</p> <p>9 Q Where was that?</p> <p>10 A [REDACTED], Georgia, a suburb called [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 Q Are you married?</p> <p>13 A I am.</p> <p>14 Q Do you have children?</p> <p>15 A I do not.</p> <p>16 Q How long have you been married?</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: Thirty-three years.</p> <p>20 Q (BY MR. KILBORN:) And your husband's name?</p> <p>21 A [REDACTED] Warner.</p> <p>22 Q And what does -- Does he live here in</p> <p>23 Montgomery?</p> <p>7</p>
<p>1 I, DONNA E. HENDERSON, CSR, a Court Reporter</p> <p>2 of Mobile, Alabama, and Notary Public for the State of</p> <p>3 Alabama at Large, acting as Commissioner, certify that</p> <p>4 on this date, as provided by the Alabama Rules of Civil</p> <p>5 Procedure and the foregoing stipulation of counsel,</p> <p>6 there came before me at the law offices of Copeland,</p> <p>7 Franco, Screws & Gill, P.A., 444 South Perry Street,</p> <p>8 Montgomery, Alabama, beginning at 9:05 a.m.,</p> <p>9 WENDY SUSAN WARNER, witness in the above cause, for</p> <p>10 oral examination, whereupon the following proceedings</p> <p>11 were had:</p> <p>12 WENDY SUSAN WARNER,</p> <p>13 the witness, having been first duly sworn by the Court</p> <p>14 Reporter, was examined and testified as follows:</p> <p>15</p> <p>16 THE COURT REPORTER: Usual stipulations?</p> <p>17 BY MR. SCOFIELD: We'll reserve the right to</p> <p>18 read and sign her deposition transcript.</p> <p>19</p> <p>20 EXAMINATION</p> <p>21 BY MR. KILBORN:</p> <p>22 Q What's your full name?</p> <p>23 A Wendy Susan Warner.</p> <p>6</p>	<p>1 A He does.</p> <p>2 Q And what does Mr. Warner do?</p> <p>3 A He is a health care sales manager with [REDACTED]</p> <p>4 [REDACTED].</p> <p>5 Q Do you have a lawyer here today?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 You can answer.</p> <p>8 THE WITNESS: I think so, yes, I have two.</p> <p>9 Q (BY MR. KILBORN:) Okay. And what would</p> <p>10 their names be?</p> <p>11 A Their names would be Trent Scofield and</p> <p>12 Chris Smith.</p> <p>13 Q Have you ever had your deposition taken</p> <p>14 before?</p> <p>15 A I have.</p> <p>16 Q Tell me about that.</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 THE WITNESS: Keep answering?</p> <p>19 BY MR. SCOFIELD: Sure.</p> <p>20 THE WITNESS: I've been in human resources</p> <p>21 for over twenty years and my role has been to represent</p> <p>22 the company in several deposition hearings.</p> <p>23 Q (BY MR. KILBORN:) The Hyundai Company or</p> <p>8</p>

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<p>1 some other company?</p> <p>2 A Hyundai as well as other companies.</p> <p>3 Q Okay. How many depositions have you given</p> <p>4 while employed by Hyundai? And we'll get into the</p> <p>5 specifics of that in a minute.</p> <p>6 A Probably five.</p> <p>7 Q Five.</p> <p>8 And other -- other companies or other</p> <p>9 employers?</p> <p>10 A Probably twenty.</p> <p>11 Q So roughly twenty-five depositions?</p> <p>12 A I would say that's a fair assessment.</p> <p>13 Q And how about testimony in court as opposed</p> <p>14 to a deposition?</p> <p>15 A Yes, I have.</p> <p>16 Q And how many times there?</p> <p>17 A Two.</p> <p>18 Q Tell me about that.</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: With Hyundai, I was asked to</p> <p>21 testify in a case of an applicant who was not hired by</p> <p>22 Hyundai.</p> <p>23 Q (BY MR. KILBORN:) And that was a lawsuit</p> <p style="text-align: right;">9</p>	<p>1 THE WITNESS: We won the case. In her</p> <p>2 opinion, a supervisor had promised her a job, but the</p> <p>3 only person that can offer her a job is myself.</p> <p>4 Q (BY MR. KILBORN:) Okay. Is that still the</p> <p>5 case?</p> <p>6 A That's correct.</p> <p>7 BY MR. SCOFIELD: I'm just objecting to the</p> <p>8 form. I'm late.</p> <p>9 Q (BY MR. KILBORN:) Do you remember the name</p> <p>10 of the judge?</p> <p>11 A I'm sorry, I don't.</p> <p>12 Q And the second testimony?</p> <p>13 A Here?</p> <p>14 Q Right, with Hyundai in court.</p> <p>15 A Not in court with Hyundai.</p> <p>16 Q Okay. It was just in court then?</p> <p>17 A It was with Toyota Motor Manufacturing.</p> <p>18 Q Okay. What type of case was that?</p> <p>19 A ADA case.</p> <p>20 Q What type?</p> <p>21 A ADA.</p> <p>22 Q What is that?</p> <p>23 A Americans with Disabilities Act.</p> <p style="text-align: right;">11</p>
<p>1 here in Montgomery?</p> <p>2 A That's correct.</p> <p>3 Q Federal court or state court?</p> <p>4 A Federal.</p> <p>5 Q What -- What was the name of that?</p> <p>6 A The applicant was Looney, Deborah Looney.</p> <p>7 Q Okay. And how long ago was -- was your</p> <p>8 testimony there?</p> <p>9 A I don't recall. I believe it was two years</p> <p>10 ago.</p> <p>11 Q Okay. And what was the nature of that case?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: The applicant felt that she</p> <p>14 should have been hired for a position and she was not.</p> <p>15 Q (BY MR. KILBORN:) She was not.</p> <p>16 And did she -- What type of misconduct did</p> <p>17 she claim Hyundai did?</p> <p>18 BY MR. SCOFIELD: Object to the form.</p> <p>19 THE WITNESS: That she was offered a position</p> <p>20 and she felt that she should be employed by us.</p> <p>21 Q (BY MR. KILBORN:) What was the reason that</p> <p>22 she felt like she should be employed?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">10</p>	<p>1 Q And was that in Montgomery?</p> <p>2 A It was in Georgetown, Kentucky.</p> <p>3 Q Okay. And the cases involving Hyundai in</p> <p>4 which you've given depositions as opposed to trial</p> <p>5 testimony, could you give me the names of those and</p> <p>6 just the general nature of those cases?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: The individual most recently</p> <p>9 was an ADA claim. And, again, an applicant.</p> <p>10 Q (BY MR. KILBORN:) State or federal?</p> <p>11 A It was settled out of court.</p> <p>12 Q So there wasn't -- Was there a court case?</p> <p>13 A No, no, just a deposition.</p> <p>14 Q In legal talk, which you may or may not</p> <p>15 understand, you have to have some type of lawsuit to</p> <p>16 give a deposition. Was that -- Was that just a</p> <p>17 non-lawsuit in which you testified and you called it a</p> <p>18 deposition?</p> <p>19 A I can't help you there. I was just asked by</p> <p>20 my counsel to come to a place like this and do my</p> <p>21 thing.</p> <p>22 BY MR. SCOFIELD: Vince, if I may facilitate</p> <p>23 without offering testimony on Ms. Warner's behalf, I</p> <p style="text-align: right;">12</p>

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<p>1 believe it was a federal court lawsuit in which she 2 provided a deposition. 3 Q (BY MR. KILBORN:) Who was the judge? 4 BY MR. SCOFIELD: If you know. 5 THE WITNESS: I don't know. I never met the 6 judge. 7 Q (BY MR. KILBORN:) That was an ADA? 8 A Uh-huh. 9 Q And the next one you can recall where you 10 gave a deposition? 11 A It was in the Looney case, so I also did the 12 deposition as well. 13 Q Okay. I failed to ask you the name of the 14 plaintiff in the ADA case. 15 A I'm sorry, I don't recall his name. 16 Q Okay. What other depositions do you recall? 17 A Here at Hyundai, that would be it. 18 Q So that would be two depositions -- 19 A Yes. 20 Q -- for Hyundai? 21 A Uh-huh. 22 Q And one trial testimony? 23 A That's correct.</p>	<p>1 A It's in the education area, but it does have 2 a heavy emphasis on the business and human resources 3 area. 4 Q Okay. Is that the -- the final degree that 5 you received? 6 A Yes. 7 Q Did you ever study accounting? 8 A I did have some accounting classes, but I did 9 not major in that. 10 Q In college? 11 A Uh-huh. 12 Q Okay. Do you know what a financial statement 13 is? 14 BY MR. SCOFIELD: Object to the form. 15 THE WITNESS: Sure. 16 Q (BY MR. KILBORN:) What is it? 17 A A financial statement is a record of a 18 particular corporation and it does need to be filed on 19 a regular basis. 20 Q Do you know how to read a financial 21 statement? 22 BY MR. SCOFIELD: Object to the form. 23 THE WITNESS: I never have really been tested</p>
<p>1 Q Do you mind if I ask you a little bit about 2 your background? 3 A No. 4 Q Am I correct that you graduated in 5 psychology -- with a BS in psychology? 6 A That's correct. 7 Q And what year was that? 8 A 1977. 9 Q What college? 10 A Eastern Kentucky University in Richmond, 11 Kentucky. 12 Q Did you go further in your psychology career? 13 A In the educational aspect or in business? I 14 don't understand the question. 15 Q Yeah, in the educational aspect. 16 A I did pursue a Master's degree and received 17 that in 1981. 18 Q Okay. Same college? 19 A Yes. 20 Q And what was the degree? 21 A Industrial counseling. 22 Q And for the benefit of myself, what is 23 industrial counseling?</p>	<p>1 in that. 2 Q (BY MR. KILBORN:) Well, do you consider 3 yourself a person able to read a financial statement 4 since you studied it in college? 5 A In 1977 -- 6 BY MR. SCOFIELD: Object to the form. 7 THE WITNESS: -- I studied that, but I have 8 been in business and in the business world for several 9 years. 10 Q (BY MR. KILBORN:) I noticed that you worked 11 at Price, Waterhouse, Cooper, but that was not in 12 regard to accounting work? 13 A No, it was in human resources transformation. 14 I was a consultant with them. 15 Q Have you ever worked in the field of 16 accounting or auditing? 17 A No. 18 Q Do you hold any degrees in accounting or 19 auditing? 20 A No. 21 Q Certifications? 22 A No. 23 Q Licenses?</p>

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<p>1 A No.</p> <p>2 Q Are you a member of any professional</p> <p>3 organizations with regard to accounting?</p> <p>4 A No.</p> <p>5 Q Do you have -- Do financial statements have</p> <p>6 any part in your current job?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: No.</p> <p>9 Q (BY MR. KILBORN:) Same question with regard</p> <p>10 to tax returns?</p> <p>11 A I do --</p> <p>12 BY MR. SCOFIELD: Same objection.</p> <p>13 THE WITNESS: -- work with auditors and file</p> <p>14 5500s for all of our benefits claims and we do have</p> <p>15 audits for our 401K and nondiscrimination testing and</p> <p>16 we do provide information to the auditors that come to</p> <p>17 visit our CFO and our finance division, particularly in</p> <p>18 the areas of employment, personnel records, our HRIS</p> <p>19 system and payroll.</p> <p>20 Q (BY MR. KILBORN:) What is HRIS?</p> <p>21 A Human resource information system. It's our</p> <p>22 record keeping system electronically.</p> <p>23 Q And the 5500, that's a form that you file</p> <p style="text-align: right;">17</p>	<p>1 A No.</p> <p>2 Q And not a member of any legal professional</p> <p>3 organizations?</p> <p>4 A That would be correct.</p> <p>5 Q Are you a member of any professional</p> <p>6 organizations?</p> <p>7 A The Society of Human Resource Management.</p> <p>8 Q Any other?</p> <p>9 A No.</p> <p>10 Q What is your current job title?</p> <p>11 A I'm the human resource manager for employment</p> <p>12 and benefits.</p> <p>13 Q Do you have a number, like an employee</p> <p>14 number?</p> <p>15 A Uh-huh.</p> <p>16 Q Is it 103?</p> <p>17 A 123.</p> <p>18 Q 123?</p> <p>19 A Uh-huh.</p> <p>20 Q It started out as 103, right?</p> <p>21 A 100123, it's always been that that I'm aware</p> <p>22 of.</p> <p>23 Q Okay. And does that number have any meaning?</p> <p style="text-align: right;">19</p>
<p>1 with the IRS?</p> <p>2 A That's correct, for all of our benefit plans</p> <p>3 that auditors need to come in and review that before</p> <p>4 filing.</p> <p>5 Q So does the benefit plan that the 5500s</p> <p>6 relate to, does it have a name?</p> <p>7 A The benefit plan?</p> <p>8 Q Right.</p> <p>9 A The particular benefit plan, Blue Cross/Blue</p> <p>10 Shield, the Hartford.</p> <p>11 Q Okay. And you -- To go back to your</p> <p>12 education, have you ever studied law?</p> <p>13 A I believe I had some introduction to law</p> <p>14 classes when I was in school and I also attend a</p> <p>15 national conference, Society of Human Resource</p> <p>16 Management, that we do receive legal updates in regards</p> <p>17 to employment law, but to have said that I studied</p> <p>18 law --</p> <p>19 Q So you haven't been to law school?</p> <p>20 A No, sir.</p> <p>21 Q Don't hold a law license?</p> <p>22 A No.</p> <p>23 Q Never practiced law?</p> <p style="text-align: right;">18</p>	<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 THE WITNESS: I don't think so, because I was</p> <p>3 the eleventh person hired. I think it was just a</p> <p>4 random number selected.</p> <p>5 Q (BY MR. KILBORN:) The eleventh person hired</p> <p>6 and I don't see an eleven there.</p> <p>7 A No, I think it was a random number at that</p> <p>8 point. We changed systems since that time, so when I</p> <p>9 was first hired, there was a different payroll system</p> <p>10 to what we have now.</p> <p>11 Q You hired in 2004?</p> <p>12 A Three.</p> <p>13 Q Three?</p> <p>14 A Uh-huh.</p> <p>15 Q Was the plant built then?</p> <p>16 A No, it was not.</p> <p>17 Q You mentioned that you deal with accountants</p> <p>18 sometimes, you mentioned the CFO.</p> <p>19 A Uh-huh.</p> <p>20 Q Who is that?</p> <p>21 A That's Jason Lee.</p> <p>22 Q And how do you spell Lee?</p> <p>23 A L-E-E.</p> <p style="text-align: right;">20</p>

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<p>1 Q Is he -- Is he Korean?</p> <p>2 A That's correct.</p> <p>3 Q Is that an American name?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: They take American names. His</p> <p>6 last name is correct, but that is the name he goes by.</p> <p>7 Q (BY MR. KILBORN:) Right. And I realize they</p> <p>8 take American names, but do you know what his Korean</p> <p>9 name is?</p> <p>10 A Offhand I don't. I'm so accustomed to</p> <p>11 calling him that.</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: He works for headquarters in</p> <p>14 Seoul, Korea.</p> <p>15 Q (BY MR. KILBORN:) Headquarters in Seoul,</p> <p>16 Korea?</p> <p>17 A Uh-huh.</p> <p>18 Q What company does he work for?</p> <p>19 A Hyundai Motor Corporation.</p> <p>20 Q Hyundai Motor Corporation?</p> <p>21 A HMC, uh-huh.</p> <p>22 Q Is it Hyundai Motor Corporation or Hyundai</p> <p>23 Motor Company?</p> <p style="text-align: right;">21</p>	<p>1 Q Can we call them HMMA for short or do you</p> <p>2 have another name for them?</p> <p>3 A That would be it, HMMA.</p> <p>4 Q Okay. So he's in charge of all of the</p> <p>5 finances for HMMA?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: That's correct.</p> <p>8 Q (BY MR. KILBORN:) When you say in charge of,</p> <p>9 what are his duties from your observation?</p> <p>10 A He oversees various sections in that</p> <p>11 department. And that would be treasury, accounts</p> <p>12 payable, accounts receivable, tax, cost accounting,</p> <p>13 budget.</p> <p>14 Q How about human resources?</p> <p>15 A He is not responsible for human resources.</p> <p>16 Q Okay. And where does he live?</p> <p>17 A He lives here in Montgomery, Alabama.</p> <p>18 Q Do you see him every day?</p> <p>19 A Yeah, we both work on the same floor.</p> <p>20 Q All I know about the Hyundai plant is the</p> <p>21 huge forty-foot tall sign on the side of the building.</p> <p>22 Is that where you work?</p> <p>23 A Yes, I do. Not on the billboard, but in the</p> <p style="text-align: right;">23</p>
<p>1 A Hyundai Motor Corporation.</p> <p>2 Q You're sure about that?</p> <p>3 A Not really. It could be Hyundai Motor</p> <p>4 Company, Hyundai Motor -- It's probably Hyundai Motor</p> <p>5 Company, HMC, yes.</p> <p>6 Q Headquartered in Seoul, South Korea?</p> <p>7 A That's correct.</p> <p>8 Q And what does Mr. Jason Lee do here in</p> <p>9 Montgomery, Alabama?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: He has overall responsibility</p> <p>12 for all of the finance departments.</p> <p>13 Q (BY MR. KILBORN:) All of which departments?</p> <p>14 A Finance.</p> <p>15 Q Finance?</p> <p>16 A Uh-huh.</p> <p>17 Q Is there a department within, I'm going to</p> <p>18 call it your employer, HMMA?</p> <p>19 A I'm sorry, I don't understand your question.</p> <p>20 Q What's the name of your employer?</p> <p>21 A Hyundai Motor Manufacturing Alabama.</p> <p>22 Q Hyundai Motor Manufacturing Alabama?</p> <p>23 A That's correct.</p> <p style="text-align: right;">22</p>	<p>1 building, yes.</p> <p>2 Q Not on the billboard, thank goodness.</p> <p>3 But you work in that big building with the</p> <p>4 sign that says Hyundai on the side?</p> <p>5 A Yes, I do.</p> <p>6 Q And so is that a manufacturing building and</p> <p>7 offices?</p> <p>8 A The administration building is separate, but</p> <p>9 we are all in the same complex. The administration</p> <p>10 building is in front of the manufacturing area, yes.</p> <p>11 Q And his office is close to yours?</p> <p>12 A Uh-huh.</p> <p>13 Q Next door?</p> <p>14 A Across the hallway.</p> <p>15 Q Across the hall?</p> <p>16 A Uh-huh.</p> <p>17 Q So you, I guess, see him every day at work?</p> <p>18 A Yes, uh-huh.</p> <p>19 Q And does he -- does he audit the records of</p> <p>20 HMMA?</p> <p>21 A He does not, but he does have auditors come</p> <p>22 in and he reviews the reports.</p> <p>23 Q So he's in charge of the auditors?</p> <p style="text-align: right;">24</p>

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<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 THE WITNESS: We don't have an internal audit</p> <p>3 group, but he does review the audits that come from</p> <p>4 external sources.</p> <p>5 Q (BY MR. KILBORN:) Okay. And what's the name</p> <p>6 of the external auditing firm?</p> <p>7 A We have several, but the one that he uses for</p> <p>8 the finance side is KPMG.</p> <p>9 Q Do they have an office here in Montgomery?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: Atlanta.</p> <p>12 Q (BY MR. KILBORN:) So they -- Do they come</p> <p>13 down from Atlanta?</p> <p>14 A Uh-huh, yes.</p> <p>15 Q Has KPMG been an outside firm since you've</p> <p>16 been employed?</p> <p>17 A Yes.</p> <p>18 Q Has Mr. Jason Lee been the CFO conducting the</p> <p>19 same duties that -- since you were employed?</p> <p>20 A Yes.</p> <p>21 Q So he was actually employed before you?</p> <p>22 A Uh-huh, he was.</p> <p>23 Q Is he employed by HMMA also?</p> <p style="text-align: right;">25</p>	<p>1 A An expatriate is someone that's been</p> <p>2 dispatched from the corporate headquarters to serve a</p> <p>3 period of time here to help us set up the facility.</p> <p>4 Q How did he get the name expatriate?</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 THE WITNESS: It's a financial term.</p> <p>7 Q (BY MR. KILBORN:) Are there any other</p> <p>8 expatriates?</p> <p>9 A There are.</p> <p>10 Q Who are they?</p> <p>11 A We have seventy-eight of them.</p> <p>12 Q All right. And what -- Could you give me</p> <p>13 their names? And I don't want to go through all</p> <p>14 seventy-eight, just the --</p> <p>15 A Well, you could start with a lot of Lees.</p> <p>16 Lees, Parks, Jangs and Ahns and Ryus and you'd probably</p> <p>17 have them all because their names are -- there's very</p> <p>18 few names, so -- but we have vice president for human</p> <p>19 resources, a president, a CFO, a COO, a -- several</p> <p>20 directors, senior managers, coordinators, technical</p> <p>21 coordinators.</p> <p>22 Q And they all work for Hyundai Motor Company?</p> <p>23 A That's correct.</p> <p style="text-align: right;">27</p>
<p>1 A He is not. He's not on our payroll.</p> <p>2 Q So he doesn't come under your human resources</p> <p>3 department?</p> <p>4 A In terms of -- I'm sorry, I don't understand.</p> <p>5 Q Well, do you handle his benefits or his</p> <p>6 health insurance or --</p> <p>7 A Yes, they are covered under our health care</p> <p>8 plans, but they are not paid by us.</p> <p>9 Q So Jason Lee, employed by Hyundai Motor</p> <p>10 Company, is covered by HMMA's health insurance?</p> <p>11 A That's correct.</p> <p>12 Q That's Blue Cross?</p> <p>13 A Yes.</p> <p>14 Q But you don't have anything to do with --</p> <p>15 Your department doesn't have anything to do with it?</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 THE WITNESS: His benefits?</p> <p>18 Q (BY MR. KILBORN:) Right.</p> <p>19 A They do sign up themselves and their</p> <p>20 dependents while they are here as an expat.</p> <p>21 Q As a what?</p> <p>22 A Expatriate.</p> <p>23 Q What's an expatriate?</p> <p style="text-align: right;">26</p>	<p>1 Q Headquartered in Seoul, South Korea?</p> <p>2 A That's right.</p> <p>3 Q And I don't want to go through all</p> <p>4 seventy-eight because we only have seven hours for your</p> <p>5 deposition.</p> <p>6 A Okay.</p> <p>7 Q So let's just start with the highest rank.</p> <p>8 A Sure.</p> <p>9 Q And would that be the president?</p> <p>10 A That's correct.</p> <p>11 Q And what would his name be?</p> <p>12 A Mr. Ahn, A-H-N.</p> <p>13 Q And that's his American name?</p> <p>14 A No, that is his name.</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 Q (BY MR. KILBORN:) That's his real Korean</p> <p>17 name?</p> <p>18 A Uh-huh.</p> <p>19 Q So he doesn't have an American name?</p> <p>20 A It's J. S. Ahn, but because of the level of</p> <p>21 his position, he doesn't have an American name. We</p> <p>22 call him Mr. Ahn.</p> <p>23 Q Okay. And the next ranking under him would</p> <p style="text-align: right;">28</p>

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<p>1 be who?</p> <p>2 A Probably the COO.</p> <p>3 Q Chief Operating Officer would be who?</p> <p>4 A H. I. Kim.</p> <p>5 Q That's K-I-M?</p> <p>6 A Uh-huh.</p> <p>7 Q And he is the chief operating officer --</p> <p>8 A That's correct.</p> <p>9 Q -- of HMMA?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: He is of HMMA. He is the COO</p> <p>12 of HMMA, but he is here dispatched as an expat.</p> <p>13 Q (BY MR. KILBORN:) Expat meaning expatriate?</p> <p>14 A Yes, sir.</p> <p>15 Q And Mr. Ahn, the president, he is the</p> <p>16 president of HMMA, correct?</p> <p>17 A Yes.</p> <p>18 Q And he lives here in Montgomery?</p> <p>19 A He does.</p> <p>20 Q Along with Mr. Kim?</p> <p>21 A Yes.</p> <p>22 Q And I suppose all of the other seventy-eight</p> <p>23 live around Montgomery?</p> <p style="text-align: right;">29</p>	<p>1 than by their titles and job descriptions?</p> <p>2 BY MR. SCOFIELD: Object to the form.</p> <p>3 THE WITNESS: No, their performance reviews,</p> <p>4 their pay increases, their promotions, everything is</p> <p>5 communicated through HMC. Their human resources</p> <p>6 division, everything is separate, they're just here on</p> <p>7 loan in that regard. And it's a common practice, same</p> <p>8 at Toyota when I worked there, Mercedes does the same</p> <p>9 thing here in Alabama, Honda does the same thing, so</p> <p>10 it's a very similar setup when you're having a startup</p> <p>11 corporation in automotive with the transplants, all</p> <p>12 same set up, but they're here to help, to coordinate,</p> <p>13 to help the relationship building between the parent</p> <p>14 company and the affiliate.</p> <p>15 Q (BY MR. KILBORN:) So HMMA would be a startup</p> <p>16 corporation?</p> <p>17 A Yes, sir.</p> <p>18 Q With seventy-eight officers?</p> <p>19 A They're not officers. Not all of them are</p> <p>20 officers.</p> <p>21 Q Well, executives?</p> <p>22 A Not all of them are executives. I mean,</p> <p>23 you've got trainers, you've got manager level. There's</p> <p style="text-align: right;">31</p>
<p>1 A That's true.</p> <p>2 Q And they're all called expats?</p> <p>3 A Yes. Expatriates, yes.</p> <p>4 Q And they're all officers in one way or the</p> <p>5 other of HMMA?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: Yes.</p> <p>8 Q (BY MR. KILBORN:) But they all work for --</p> <p>9 A HMC.</p> <p>10 Q -- Hyundai Motor Company?</p> <p>11 A That's correct.</p> <p>12 Q Who pays them?</p> <p>13 A HMC.</p> <p>14 Q Hyundai Motor Company?</p> <p>15 A Yes.</p> <p>16 Q In Seoul, South Korea?</p> <p>17 A Yes, sir.</p> <p>18 Q So you've got seventy-eight officers of HMMA</p> <p>19 who are paid by Hyundai Motor Company headquartered in</p> <p>20 Seoul, South Korea?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: Right.</p> <p>23 Q (BY MR. KILBORN:) Are they employees other</p> <p style="text-align: right;">30</p>	<p>1 probably -- you know, the CFO, the COO and the</p> <p>2 president, you have three or four that are considered</p> <p>3 executives. The rest are in a training mode, trainers</p> <p>4 or coordinators.</p> <p>5 Q So the seventy-eight expats who are employees</p> <p>6 of Hyundai Motor Company and on loan to HMMA as far as</p> <p>7 the officers are of HMMA, do they have a name for that</p> <p>8 group of people?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 Q (BY MR. KILBORN:) Just the, you know,</p> <p>11 loanees or the expats or the --</p> <p>12 A Expatriates is what human resources has them</p> <p>13 labeled.</p> <p>14 Q Do you know when the Hyundai -- HMMA will be</p> <p>15 considered not a startup company and the expats will go</p> <p>16 back to Korea?</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 THE WITNESS: I know there's been discussion,</p> <p>19 but there's not a hard-and-fast rule as to when that</p> <p>20 will occur. Toyota had over three hundred, so we</p> <p>21 really have a very small group compared to previous</p> <p>22 automotive companies that I've worked for.</p> <p>23 Q (BY MR. KILBORN:) And this is a similar</p> <p style="text-align: right;">32</p>

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<p>1 setup, I think you said, with Toyota?</p> <p>2 A Yes, yes, it's very similar in nature.</p> <p>3 Q Do the -- I'll just call this group expats</p> <p>4 rather than giving them some other name. Do they have</p> <p>5 their own human resources department?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: Not here at this location. We</p> <p>8 do have a coordinator though, an HR coordinator, that</p> <p>9 is their contact point and he and I are at the same</p> <p>10 level, so when they arrive, he does their orientation,</p> <p>11 he let's them know when they need to go home for</p> <p>12 training, so he is their contact point here at HMMA.</p> <p>13 Q (BY MR. KILBORN:) Is the HR coordinator</p> <p>14 employed by HMMA?</p> <p>15 A No, HMC.</p> <p>16 Q HMC?</p> <p>17 A Uh-huh. And each department has a</p> <p>18 coordinator like that that supports the American</p> <p>19 management and the expats.</p> <p>20 Q And name me the various departments.</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: We have divisions. I assume</p> <p>23 you want the divisions first and then we'll go from</p> <p style="text-align: right;">33</p>	<p>1 benefits when they come in and audit?</p> <p>2 A And employment and our record keeping system.</p> <p>3 Q And then you report to Mr. Jason Lee with</p> <p>4 regard to KPMG audits of your department?</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 THE WITNESS: I don't report to him, it's a</p> <p>7 dotted line though from the standpoint of any</p> <p>8 department that is requesting an audit that that</p> <p>9 information be shared.</p> <p>10 Q (BY MR. KILBORN:) I want to talk about that</p> <p>11 dotted line since I'm not familiar with that concept.</p> <p>12 A Okay.</p> <p>13 Q Could you tell me about the concept of the</p> <p>14 dotted line?</p> <p>15 A Well, I guess from a standpoint of human</p> <p>16 resources, you play a variety of roles, you support a</p> <p>17 variety of departments, so it's not an official dotted</p> <p>18 line, but certainly when auditors are in your company</p> <p>19 and you're requested to provide information, Jason Lee</p> <p>20 is responsible for signing off on those audits, but</p> <p>21 every department needs to cooperate and provide</p> <p>22 information that's being requested by the audit.</p> <p>23 Q When you say every department needs to</p> <p style="text-align: right;">35</p>
<p>1 there.</p> <p>2 Q (BY MR. KILBORN:) Sure.</p> <p>3 A Production, then we have finance, human</p> <p>4 resources and administration. There's one more.</p> <p>5 There's four. Let's see, you've got human resources</p> <p>6 and administration, you've got the production division,</p> <p>7 you've got the finance division, and purchasing.</p> <p>8 Q And the expats have that breakdown of</p> <p>9 divisions and then HMMA has that breakdown of</p> <p>10 divisions?</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 THE WITNESS: I guess from the expats you</p> <p>13 mean are they in all of those divisions?</p> <p>14 Q (BY MR. KILBORN:) That's what I meant, yes,</p> <p>15 ma'am.</p> <p>16 A Yes, uh-huh.</p> <p>17 Q To get back to the KPMG, which -- do you have</p> <p>18 access to the KPMG financial records?</p> <p>19 A No.</p> <p>20 Q Do you have --</p> <p>21 A I have the audits that pertain to benefits,</p> <p>22 but I don't have the whole company audit, no.</p> <p>23 Q So you interact with KPMG with regard to</p> <p style="text-align: right;">34</p>	<p>1 cooperate, is that a verbal order, is that in a written</p> <p>2 form?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: It's kind of you know, I guess,</p> <p>5 having been in the business that when an audit is</p> <p>6 conducted you need to comply with that request. And</p> <p>7 also, in order to be able to file your own information</p> <p>8 and time to the government, it's your due diligence to</p> <p>9 be cooperative.</p> <p>10 Q (BY MR. KILBORN:) How do you know in your</p> <p>11 job -- Well, let me ask you another question first:</p> <p>12 Are the expats running HMMA?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: I don't understand your</p> <p>15 question, I'm sorry.</p> <p>16 Q (BY MR. KILBORN:) You have seventy-eight</p> <p>17 expats with all of these various positions from the</p> <p>18 president on down of HMMA. The expats as a group of</p> <p>19 seventy-eight, or less if you want to tell me that, do</p> <p>20 they run HMMA?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: I think if you are familiar</p> <p>23 with Asian culture, it's consensus. Certainly, whether</p> <p style="text-align: right;">36</p>

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<p>1 that's Japanese or Korean, again, the same setup, it's</p> <p>2 a collaborative effort. It's a one-billion-dollar</p> <p>3 investment for this company and certainly they want to</p> <p>4 have good information and they want this company to be</p> <p>5 successful, so it is a collaboration. It's not the</p> <p>6 Koreans making the ultimate decision, it's not the</p> <p>7 Americans. Again, it's consensus building when we are</p> <p>8 trying to accomplish any project or any activity.</p> <p>9 Q (BY MR. KILBORN:) Ultimately, if there's no</p> <p>10 consensus, who has the final say?</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 THE WITNESS: Typically, just like in any</p> <p>13 environment or any culture, you have to reach an</p> <p>14 agreement. It's not usually one way or the other, you</p> <p>15 come to a meeting of the minds of what -- what you both</p> <p>16 can live with.</p> <p>17 Q (BY MR. KILBORN:) So you have to have a</p> <p>18 consensus between seventy-eight expats --</p> <p>19 A Not all seventy-eight, but the executive</p> <p>20 level.</p> <p>21 Q Okay. The executive level of the expats,</p> <p>22 that would be the president, CEO -- I guess they don't</p> <p>23 have a CEO, do they?</p> <p style="text-align: right;">37</p>	<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 THE WITNESS: We do have vice president</p> <p>3 levels that are Americans and they all sit on the Board</p> <p>4 of Directors and meet weekly, so I'd say that they're a</p> <p>5 part of the management team, but they're not the total</p> <p>6 management team.</p> <p>7 Q (BY MR. KILBORN:) So you do have Americans</p> <p>8 who sit on the -- who do hold a vice president</p> <p>9 position?</p> <p>10 A That's correct.</p> <p>11 Q Are there seventy-eight of them?</p> <p>12 A We don't have seventy-eight expats that are</p> <p>13 executives either, but we do have --</p> <p>14 Q So how many vice presidents does HMMA have?</p> <p>15 A On the American side, we have two.</p> <p>16 Q Two.</p> <p>17 And how about on the Korean side?</p> <p>18 A The CFO, the -- I think we have two.</p> <p>19 Q And the Korean side work for Hyundai Motor</p> <p>20 Company in Seoul?</p> <p>21 A Right.</p> <p>22 Q And the American side works for HMMA?</p> <p>23 A Yes.</p> <p style="text-align: right;">39</p>
<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 THE WITNESS: H. I. Kim is the COO.</p> <p>3 Q (BY MR. KILBORN:) Oh, the COO. Do they have</p> <p>4 a CEO?</p> <p>5 A COO.</p> <p>6 Q But HMMA doesn't have a CEO?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: That's the president.</p> <p>9 Q (BY MR. KILBORN:) All right. And that's</p> <p>10 Mr. Kim?</p> <p>11 A It's Mr. Ahn.</p> <p>12 Q Mr. Ahn, okay, excuse me. I thought he was</p> <p>13 the president. He must be the president and CEO?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: That's right.</p> <p>16 Q (BY MR. KILBORN:) So the expats who are the</p> <p>17 executives of HMMA, would that be basically Mr. Ahn,</p> <p>18 president and CEO; Mr. Kim, COO; Mr. Jason Lee, CFO?</p> <p>19 Anybody else?</p> <p>20 A That should do it.</p> <p>21 Q Would it be fair to say that you've really</p> <p>22 got three top executives in HMMA that are in charge of</p> <p>23 HMMA?</p> <p style="text-align: right;">38</p>	<p>1 Q Okay. You mentioned the Board of Directors.</p> <p>2 How many members of the HMMA Board of Directors are</p> <p>3 there?</p> <p>4 A It's not a Board of Directors, it's called a</p> <p>5 directors meeting. It's not the Board. It's a weekly</p> <p>6 meeting that they go over production results and</p> <p>7 departmental updates. It's not a true Board of</p> <p>8 Directors, it's a directors meeting, but it's the</p> <p>9 directors, the vice presidents are there.</p> <p>10 Q So HMMA doesn't have a Board of Directors?</p> <p>11 A No, not that I know of.</p> <p>12 Q In the complaint, there's a defendant called</p> <p>13 Hyundai Motor Manufacturing Alabama, L.L.C. That's</p> <p>14 what we've been referring to as HMMA?</p> <p>15 A Uh-huh.</p> <p>16 Q Do you know what an L.L.C. is?</p> <p>17 A Limited liability corporation.</p> <p>18 Q Outside of knowing what the letters stand</p> <p>19 for, do you know what it is?</p> <p>20 BY MR. SCOFIELD: Object to the form.</p> <p>21 THE WITNESS: Not really, no. I know it's a</p> <p>22 partnership, a corporation, that's utilized to begin a</p> <p>23 business, but I don't have a lot of accurate</p> <p style="text-align: right;">40</p>

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<p>1 information on that, no.</p> <p>2 Q (BY MR. KILBORN:) Do you have inaccurate</p> <p>3 information on that?</p> <p>4 A Probably not.</p> <p>5 Q So you have no information?</p> <p>6 A Limited liability corporation, no.</p> <p>7 Q Outside of knowing what L.L.C. stands for,</p> <p>8 you don't have any information, accurate or inaccurate?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: I know that we were</p> <p>11 incorporated in Delaware. I know that we recorded that</p> <p>12 with the Secretary of State here in Alabama.</p> <p>13 Q (BY MR. KILBORN:) How do you know that?</p> <p>14 A That was shared with me with our lawyer when</p> <p>15 I signed initial information in regards to HMMA and</p> <p>16 HMA.</p> <p>17 Q So you were wanting to know in 2003 who you</p> <p>18 were working for.</p> <p>19 Who was the lawyer?</p> <p>20 BY MR. SCOFIELD: Object to the form. And,</p> <p>21 again, I'm going to -- up to the extent that this would</p> <p>22 infringe on any attorney-client privilege, I'm going to</p> <p>23 instruct the witness not to answer in order to preserve</p> <p style="text-align: right;">41</p>	<p>1 Q You don't have any personal knowledge of</p> <p>2 incorporation of HMMA or its qualification with the</p> <p>3 Secretary of State or any other governmental body?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: No, I just know, as I said, the</p> <p>6 filing and that was shared with me.</p> <p>7 Q (BY MR. KILBORN:) And that information was</p> <p>8 2003 -- given to you in 2003?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: Not 2003, just recently with</p> <p>11 this particular case.</p> <p>12 Q (BY MR. KILBORN:) Oh, with this particular</p> <p>13 case --</p> <p>14 A Yes.</p> <p>15 Q -- that we're here on today?</p> <p>16 A Yes.</p> <p>17 Q Okay. That was in 2007 --</p> <p>18 A Yes.</p> <p>19 Q -- for purposes of your affidavit that we'll</p> <p>20 get to in a minute?</p> <p>21 A Right, right.</p> <p>22 Q Before that, did you know where HMMA was</p> <p>23 incorporated?</p> <p style="text-align: right;">43</p>
<p>1 that privilege.</p> <p>2 If you care to identify the name of the</p> <p>3 lawyer, that's fine, but the substance of the</p> <p>4 conversation, I'm going to instruct you not to answer</p> <p>5 in order to preserve the privilege.</p> <p>6 THE WITNESS: So the lawyer when I started or</p> <p>7 the lawyer that I signed the --</p> <p>8 Q (BY MR. KILBORN:) Yeah, the lawyer who said,</p> <p>9 you know, HMMA is a Delaware company and we filed with</p> <p>10 the Secretary of State, that simple information.</p> <p>11 BY MR. SCOFIELD: Again, I'm going to object</p> <p>12 to the extent that that question characterizes any</p> <p>13 information which was provided from counsel, but I will</p> <p>14 let her identify the counsel to who she's referencing.</p> <p>15 THE WITNESS: That's Chad Griffon.</p> <p>16 Q (BY MR. KILBORN:) How do you spell that?</p> <p>17 A G-R-I-F-F-O-N, C-H-A-D.</p> <p>18 Q Is he a Montgomery lawyer?</p> <p>19 A He was our in-house counsel.</p> <p>20 Q When you say our, you mean HMMA's?</p> <p>21 A Uh-huh.</p> <p>22 Q Is he still around?</p> <p>23 A No, he's left the company.</p> <p style="text-align: right;">42</p>	<p>1 A Yes.</p> <p>2 Q And how did you find that out?</p> <p>3 A The person that I interviewed with.</p> <p>4 Q Who was that?</p> <p>5 A That was the director of human resources as</p> <p>6 well as the vice president for HR and administration.</p> <p>7 Q Who was that?</p> <p>8 A B. M. Ahn and Greg Kimble.</p> <p>9 Q And who did they work for at the time?</p> <p>10 A HMMA and HMC.</p> <p>11 Q Both?</p> <p>12 A Uh-huh. Mr. Ahn worked for HMC. Mr. Kimble</p> <p>13 worked for HMMA.</p> <p>14 Q Does Mr. Ahn work for HMMA?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: No.</p> <p>17 Q (BY MR. KILBORN:) How about the other</p> <p>18 gentleman?</p> <p>19 A Mr. Kimble?</p> <p>20 Q Yeah.</p> <p>21 A HMMA.</p> <p>22 Q And when did Mr. Griffon leave?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">44</p>

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<p>1 THE WITNESS: I'm sorry, I don't remember.</p> <p>2 Q (BY MR. KILBORN:) Was that a voluntary</p> <p>3 separation?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 Q (BY MR. KILBORN:) Are there any expats,</p> <p>7 particularly executives that we've talked about, who</p> <p>8 are employed both by HMC and HMMA?</p> <p>9 A No.</p> <p>10 Q All employed by HMC?</p> <p>11 A That's correct.</p> <p>12 Q Are there any Koreans employed by HMMA at</p> <p>13 all?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: Do you mean from the standpoint</p> <p>16 if that was their mother country before they --</p> <p>17 Q (BY MR. KILBORN:) Good question. Are there</p> <p>18 any expats -- Let me rephrase it. Any expats employed</p> <p>19 by HMMA?</p> <p>20 A No.</p> <p>21 Q All by HMC?</p> <p>22 A Correct.</p> <p>23 Q And are there any -- What do you call the</p> <p style="text-align: right;">45</p>	<p>1 A Uh-huh.</p> <p>2 Q And you know what that is --</p> <p>3 A Uh-huh.</p> <p>4 Q -- Board of Directors?</p> <p>5 And have you actually attended Board of</p> <p>6 Directors meetings of the corporation?</p> <p>7 A No, I have not.</p> <p>8 Q And do you know that companies can have</p> <p>9 various numbers of Board members?</p> <p>10 A Uh-huh.</p> <p>11 Q Are you familiar with that?</p> <p>12 A Yes.</p> <p>13 Q Are you also familiar with the fact that a</p> <p>14 Board of Directors of a corporation would be a separate</p> <p>15 level of authority from the officers of the</p> <p>16 corporation?</p> <p>17 A Uh-huh.</p> <p>18 Q Do you know that?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: Sure. Yes, I know that.</p> <p>21 Q (BY MR. KILBORN:) Don't agree with me if you</p> <p>22 don't know.</p> <p>23 A I mean, I've heard of that before. Yes, I</p> <p style="text-align: right;">47</p>
<p>1 American side, Americans?</p> <p>2 BY MR. SCOFIELD: Object to the form.</p> <p>3 THE WITNESS: Team members.</p> <p>4 Q (BY MR. KILBORN:) Team members?</p> <p>5 A Yes.</p> <p>6 Q So the Americans are called team members?</p> <p>7 A Uh-huh.</p> <p>8 Q And what are the expats called?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: HMC expats.</p> <p>11 Q (BY MR. KILBORN:) Expats.</p> <p>12 So for purposes of the deposition, if I use</p> <p>13 the word team members, I'm talking about Americans; if</p> <p>14 I use the name expats, I'm talking about the South</p> <p>15 Korean group.</p> <p>16 A That would be fine.</p> <p>17 Q Okay. Do you know whether or not HMMA has</p> <p>18 any type of governing board at all?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: I'm sorry, I don't understand</p> <p>21 your question.</p> <p>22 Q (BY MR. KILBORN:) You've heard of a Board of</p> <p>23 Directors, I'm sure.</p> <p style="text-align: right;">46</p>	<p>1 know that structure.</p> <p>2 Q All right. What are the terms -- or the term</p> <p>3 or terms of the management or executives or any type of</p> <p>4 authority that actually governs as a group the company</p> <p>5 known as HMMA?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: It varies depending on the</p> <p>8 needs of the corporation. They have had presidents</p> <p>9 that have been there one year, two years, three years</p> <p>10 and then they've returned back to HMC in a different</p> <p>11 role or setting up another corporation.</p> <p>12 Q (BY MR. KILBORN:) So since 2003, there's</p> <p>13 been a constant flow of executives back and forth</p> <p>14 between HMMA and HMC?</p> <p>15 A That's correct.</p> <p>16 Q On all different levels?</p> <p>17 A Yeah.</p> <p>18 Q President, CEO?</p> <p>19 A Yes.</p> <p>20 Q CFO, COO?</p> <p>21 A Yeah, except for the CFO, that's been</p> <p>22 constant. All the others have moved and there have</p> <p>23 been different levels of executives and different</p> <p style="text-align: right;">48</p>

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<p>1 individuals filling those roles, yes.</p> <p>2 Q How is the ownership of HMMA held?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: My understanding is that in</p> <p>5 terms of the vehicles, we manufacture the cars, the</p> <p>6 cars are money gated or not owned by us after they</p> <p>7 leave the line and they are given to HMA to sell and</p> <p>8 distribute, but our parent corporation is HMC Seoul,</p> <p>9 Korea.</p> <p>10 Q (BY MR. KILBORN:) And I haven't heard that</p> <p>11 term money gated. Could you tell me what that is?</p> <p>12 A My understanding is money gated is that after</p> <p>13 the vehicle is at the end of the line, it is</p> <p>14 transferred to HMA to be owned by them and sold and</p> <p>15 distributed, so after it releases -- ends our line and</p> <p>16 is produced, then the car is no longer owned by us, it</p> <p>17 is owned by HMA and they are responsible for selling</p> <p>18 and distributing the vehicle.</p> <p>19 Q You used the term given. Is that literally</p> <p>20 true?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: In terms of the team members,</p> <p>23 the vehicle then goes into a vehicle processing center</p> <p style="text-align: right;">49</p>	<p>1 logistics of getting it from the Hyundai plant to HMA</p> <p>2 for distribution is handled by Glovis, which is --</p> <p>3 A A vehicle processing center.</p> <p>4 Q -- vehicle processing?</p> <p>5 Is that another name for freight and</p> <p>6 logistics?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: I know that they prepare the</p> <p>9 vehicle for shipment. I don't know if they are</p> <p>10 actually the individuals that haul the cars.</p> <p>11 Q (BY MR. KILBORN:) Does -- Do you know</p> <p>12 anything about whether or not HMA pays HMMA for the</p> <p>13 vehicles that it manufactures?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: I honestly don't know. I'm not</p> <p>16 sure about the financials of that.</p> <p>17 Q (BY MR. KILBORN:) You have no knowledge of</p> <p>18 the financial transactions between HMMA and HMA?</p> <p>19 A No.</p> <p>20 Q No, meaning you don't know anything about</p> <p>21 that?</p> <p>22 A That's correct.</p> <p>23 Q So you don't know whether HMMA gives the</p> <p style="text-align: right;">51</p>
<p>1 called Glovis, which is next to us. It's put on the</p> <p>2 rail cars or shipped by truck to the various</p> <p>3 dealerships but paper-wise.</p> <p>4 Q (BY MR. KILBORN:) That's G-L-O-V-I-S?</p> <p>5 A G-L-O-V-I-S, yes.</p> <p>6 Q And what is the name of Glovis?</p> <p>7 A That is the name.</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: That is the name.</p> <p>10 Q (BY MR. KILBORN:) What is the legal name of</p> <p>11 Glovis?</p> <p>12 BY MR. SCOFIELD: Same objection.</p> <p>13 THE WITNESS: Glovis, that's all I know.</p> <p>14 Q (BY MR. KILBORN:) Is Glovis the freight and</p> <p>15 logistics company under the Hyundai umbrella?</p> <p>16 A It's a vehicle processing center.</p> <p>17 Q Vehicle processing?</p> <p>18 A Uh-huh. They get the vehicle ready to be</p> <p>19 transported, shrink wrap.</p> <p>20 Q So from your understanding, once the vehicle</p> <p>21 is completed -- has completed the manufacturing process</p> <p>22 at the Hyundai plant in Montgomery by HMMA, it's then</p> <p>23 money gated to HMA to sell and distribute and the</p> <p style="text-align: right;">50</p>	<p>1 vehicles to HMA or whether HMA pays for them or how it</p> <p>2 pays for them or what it pays for them or how that's</p> <p>3 figured?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: I don't.</p> <p>6 Q (BY MR. KILBORN:) And you don't know how</p> <p>7 that's carried on the financial statements of HMA or</p> <p>8 HMC or HMMA?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: No.</p> <p>11 Q (BY MR. KILBORN:) Or Glovis?</p> <p>12 A No.</p> <p>13 Q Is it correct that you know zero about the</p> <p>14 financial transactions between HMA, HMC and HMMA?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: That would be true.</p> <p>17 Q (BY MR. KILBORN:) Do you know who does know</p> <p>18 about the financial transactions between those three?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: The chief financial officer,</p> <p>21 Jason Lee.</p> <p>22 Q (BY MR. KILBORN:) Mr. Lee?</p> <p>23 A Yes, sir.</p> <p style="text-align: right;">52</p>

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1 Q He would know it all?	1 THE WITNESS: No.
2 BY MR. SCOFIELD: Object to the form.	2 Q (BY MR. KILBORN:) Do you know anything about
3 THE WITNESS: I would think so.	3 the financial relationships between HMC, HMMA and HMA?
4 Q (BY MR. KILBORN:) Do you speak Korean?	4 BY MR. SCOFIELD: Object to the form.
5 A No.	5 THE WITNESS: No.
6 Q Does Mr. Jason Lee speak Korean?	6 Q (BY MR. KILBORN:) Do you know anything about
7 A Yes, very well.	7 the business purposes of those three?
8 Q Does he speak English?	8 A Yes.
9 A Yes, very well.	9 Q And the business purposes of HMC would be
10 Q How about Mr. Ahn?	10 what?
11 A Yes.	11 A They are the headquarters and they are the
12 Q How about Mr. Mun?	12 parent company.
13 A Mr. Mun?	13 Q The parent company of who?
14 Q M-U-N, do you know him?	14 A HMMA and HMA.
15 A I do not.	15 Q How about Glovis?
16 Q He's got something to do with this case. Do	16 A I do know that there is some sort of
17 you know anything about a Mr. Mun?	17 relationship with them, that there's a certain
18 BY MR. SCOFIELD: Object to the form.	18 percentage that they own, but I don't know the actual
19 THE WITNESS: I've heard the name before, but	19 percentage.
20 I don't know him personally.	20 Q Well, the -- You refer to HMC as -- I think
21 Q (BY MR. KILBORN:) Do you know whether or not	21 you used the word parent?
22 he telephoned Leon Dees, the plaintiff?	22 A Uh-huh.
23 BY MR. SCOFIELD: Object to the form.	23 Q What do you mean by parent?
53	55
1 THE WITNESS: I do not.	1 BY MR. SCOFIELD: Object to the form.
2 Q (BY MR. KILBORN:) Did you ever talk to	2 THE WITNESS: They own HMMA, they own HMC.
3 Mr. Mun -- I'm going to say Mun -- I think it's spelled	3 And, again, with Asian culture, they utilize that term
4 M-U-N. Had anything to do with the plaintiff and his	4 as a role that we're siblings so there is a
5 employment during his employment, during his	5 relationship, but they are the owner and corporate
6 termination or after his termination?	6 headquarters for all of the affiliates.
7 BY MR. SCOFIELD: Object to the form.	7 Q (BY MR. KILBORN:) HMC?
8 THE WITNESS: I'm not familiar with that, no,	8 A Yes, sir.
9 I don't know.	9 Q Do you know who owns HMC?
10 Q (BY MR. KILBORN:) Now, Mr. Kim, does he	10 BY MR. SCOFIELD: Object to the form.
11 speak English?	11 THE WITNESS: I would think Chairman Chung.
12 A Yes.	12 Q (BY MR. KILBORN:) Have you met him?
13 Q The expats that you have dealings with on a	13 A Yes.
14 daily basis, do they all speak English?	14 Q I have not met him, but I've read all about
15 A Yes. They do have to take a test of English	15 him. When is the last time that you saw him?
16 before they're allowed to pursue this type of	16 A Probably at our grand opening in 2005.
17 opportunity, so that is a requirement before they're	17 Q And Chung Mong-koo, is that his Korean name?
18 allowed to accept an assignment here in the U.S. Some	18 A Yes.
19 are better than others, but, yes, they do have to take	19 Q And does he have an American name?
20 some English language training.	20 A No.
21 Q Do you know anything about the legal	21 Q And he's referred to as Chairman Chung?
22 relationship between HMA, HMC or HMMA?	22 A That's correct.
23 BY MR. SCOFIELD: Object to the form.	23 Q Has he been, to your knowledge, to Montgomery
54	56

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<p>1 since the opening?</p> <p>2 A Not that I'm aware of. He may have come on</p> <p>3 separate occasions, but my introduction to him was at</p> <p>4 the grand opening that we had in 2005.</p> <p>5 Q And who do you understand him to be?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: Chairman of the corporation,</p> <p>8 HMC.</p> <p>9 Q (BY MR. KILBORN:) HMC?</p> <p>10 A Yes.</p> <p>11 Q And what is his son's name?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: Chung, Jr. Honestly, I don't</p> <p>14 recall.</p> <p>15 Q (BY MR. KILBORN:) Have you ever met him?</p> <p>16 A Yes.</p> <p>17 Q Where did you meet him?</p> <p>18 A Same timeframe, at the grand opening.</p> <p>19 Q And what is his relationship, other than</p> <p>20 father-son, to Hyundai Motor Company, father-son being</p> <p>21 Chairman Chung?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: None that I'm aware of.</p> <p style="text-align: right;">57</p>	<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 Q (BY MR. KILBORN:) Do you know anything about</p> <p>3 Kia Motors Corporation?</p> <p>4 A Yes.</p> <p>5 Q What do you know about them?</p> <p>6 BY MR. SCOFIELD: Same objection.</p> <p>7 THE WITNESS: Plant being established in</p> <p>8 Georgia about eighty-five miles north of us.</p> <p>9 Q (BY MR. KILBORN:) Okay. Do you have</p> <p>10 anything to do with that?</p> <p>11 A Not in the standpoint of being -- of working</p> <p>12 for them, but certainly exchange of information.</p> <p>13 Q And that's current?</p> <p>14 A Uh-huh.</p> <p>15 Q Are they sort of in the same spot that HMMA</p> <p>16 was in when you began, a startup company --</p> <p>17 A Yes.</p> <p>18 Q -- in Georgia?</p> <p>19 A Yes.</p> <p>20 Q And do you know the relationship of Kia</p> <p>21 Motors Corporation to HMC or HMMA or HMA?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: I know that Hyundai purchased</p> <p style="text-align: right;">59</p>
<p>1 Q (BY MR. KILBORN:) And is it your testimony</p> <p>2 that as far as your understanding and your knowledge</p> <p>3 that Chairman Chung owns HMC?</p> <p>4 A Yes.</p> <p>5 Q Any other family members of Chairman Chung</p> <p>6 that you know of own HMC?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: Not that I'm aware of.</p> <p>9 Q (BY MR. KILBORN:) So that would mean</p> <p>10 Chairman Chung not only owns HMC but he owns HMMA, HMA,</p> <p>11 Glovis?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: I know he owns the automotive</p> <p>14 division. I don't know if he owns all the others.</p> <p>15 There's, you know, several other divisions of HMC as</p> <p>16 you probably know. I do know he owns the automotive</p> <p>17 side, but there's several other; construction, retail,</p> <p>18 shipbuilding.</p> <p>19 Q (BY MR. KILBORN:) Let me give you some names</p> <p>20 and tell me if you know about these companies who I</p> <p>21 understand are some type of affiliated companies with</p> <p>22 HMC, but I don't want you to agree with that, just tell</p> <p>23 me.</p> <p style="text-align: right;">58</p>	<p>1 Kia several years ago, but they are two totally</p> <p>2 separate entities.</p> <p>3 Q (BY MR. KILBORN:) And is Chairman Chung,</p> <p>4 Jr. -- is that the --</p> <p>5 A Yeah. Honestly, I don't know if that's the</p> <p>6 right term, but yeah.</p> <p>7 Q How was he introduced?</p> <p>8 A We shook hands, he thanked us for our service</p> <p>9 and it was at a dinner.</p> <p>10 Q Okay. Is he in some fashion the head of Kia?</p> <p>11 A That's my understanding, yes.</p> <p>12 Q Does he own Kia?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: Honestly, I don't know.</p> <p>15 Q (BY MR. KILBORN:) How about Hyundai Steel</p> <p>16 Company?</p> <p>17 A Does he own Hyundai Steel?</p> <p>18 Q Do you know anything about Hyundai Steel</p> <p>19 Company?</p> <p>20 A I know that it's an affiliate of HMC, but I</p> <p>21 don't have any working relationships with them.</p> <p>22 Q Other than knowing the name Glovis, you don't</p> <p>23 know its relationship with any Hyundai related company?</p> <p style="text-align: right;">60</p>

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<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 THE WITNESS: No. We do have supplier</p> <p>3 meetings with all of the tier one suppliers and Glovis</p> <p>4 does attend, but they're human resources folks so we,</p> <p>5 again, exchange information, support from a human</p> <p>6 resources situation, but it's called a supplier meeting</p> <p>7 that human resources and purchasing tries to support</p> <p>8 the suppliers with information. And, again, same as we</p> <p>9 did at Toyota, same as other transplants do to support</p> <p>10 their suppliers in their base here.</p> <p>11 Q (BY MR. KILBORN:) You used a term and I</p> <p>12 didn't write it down. Is there a term for these</p> <p>13 meetings?</p> <p>14 A It's called a supplier meeting.</p> <p>15 Q Supplier meeting?</p> <p>16 A Uh-huh. They supply various components and</p> <p>17 parts to build the vehicle and so you have to have a</p> <p>18 real close relationship as well as a just-in-time type</p> <p>19 of operation.</p> <p>20 Q And how often are these meetings held?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: Quarterly.</p> <p>23 Q (BY MR. KILBORN:) Quarterly?</p> <p style="text-align: right;">61</p>	<p>1 Automotive Group?</p> <p>2 A I've heard of it, yes.</p> <p>3 Q Do you know what it is?</p> <p>4 A No.</p> <p>5 Q Do you know anything about its structure?</p> <p>6 A Not really.</p> <p>7 Q Financial, legal, corporate, otherwise?</p> <p>8 A No.</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 Q (BY MR. KILBORN:) Does HMMA, L.L.C. have</p> <p>11 members?</p> <p>12 A Has members, does L.L.C. have members?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 Q (BY MR. KILBORN:) I was asking you that</p> <p>15 question.</p> <p>16 A I don't understand. Obviously, I don't know,</p> <p>17 so I don't understand the question.</p> <p>18 Q Does HMMA, L.L.C. have stock?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: Not that I know of.</p> <p>21 Q (BY MR. KILBORN:) Explain to me then the</p> <p>22 legal or business control of HMMA, L.L.C. How is it</p> <p>23 controlled if it's not owned by stockholders and</p> <p style="text-align: right;">63</p>
<p>1 A Uh-huh.</p> <p>2 Q And the last one was when?</p> <p>3 A I didn't go, but team relations went and</p> <p>4 purchasing, so let's see, this is November, I would say</p> <p>5 probably the June timeframe.</p> <p>6 Q And who attends these meetings?</p> <p>7 A The human resources groups and sometimes</p> <p>8 purchasing.</p> <p>9 Q Of the Hyundai companies?</p> <p>10 A Tier ones.</p> <p>11 Q Of the tier ones.</p> <p>12 A Uh-huh.</p> <p>13 Q Tell me what you mean by tier ones.</p> <p>14 A Tier one is a direct supplier. Tier two</p> <p>15 could be providing support to the tier one, so it's</p> <p>16 only tier one suppliers which is a direct supplier to</p> <p>17 HMMA.</p> <p>18 Q And are all of the tier one companies Hyundai</p> <p>19 companies?</p> <p>20 A No.</p> <p>21 Q How about tier two?</p> <p>22 A No. Conglomerations; some are, some aren't.</p> <p>23 Q Okay. Have you ever heard the name Hyundai?</p> <p style="text-align: right;">62</p>	<p>1 doesn't have a Board of Directors, it doesn't have</p> <p>2 officers?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: I honestly don't know.</p> <p>5 BY MR. SCOFIELD: The witness can answer to</p> <p>6 the extent that she knows.</p> <p>7 Q (BY MR. KILBORN:) Is it your understanding</p> <p>8 that it's family-owned?</p> <p>9 A Uh-huh.</p> <p>10 Q You have to say yes or no.</p> <p>11 A Yes.</p> <p>12 Q Is that Chairman Chung?</p> <p>13 A Yes.</p> <p>14 Q Would that include his son?</p> <p>15 A I would think so, yes.</p> <p>16 Q Any other family members?</p> <p>17 A Not that I know of.</p> <p>18 Q Am I correct that having worked for Toyota</p> <p>19 and then now having worked for Hyundai, both of which</p> <p>20 are Asian companies, that you know something about the</p> <p>21 Asian corporate mentality?</p> <p>22 A Somewhat?</p> <p>23 Q There's a Korean word that means family</p> <p style="text-align: right;">64</p>

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<p>1 controlled, a dynasty. Do you know what that word is?</p> <p>2 BY MR. SCOFIELD: Object to the form.</p> <p>3 THE WITNESS: In reading newspapers, I</p> <p>4 believe it's called chaebol.</p> <p>5 Q (BY MR. KILBORN:) Right. Do you know how</p> <p>6 that's spelled?</p> <p>7 A I'd be guessing.</p> <p>8 Q Okay. What is your understanding from your</p> <p>9 reading what a chaebol is?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: Just that it's a family-owned</p> <p>12 company.</p> <p>13 Q (BY MR. KILBORN:) Is that what Hyundai is?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: I'd be guessing. I don't know.</p> <p>16 Q (BY MR. KILBORN:) From what you know, what</p> <p>17 you've seen at Hyundai and what you've read about a</p> <p>18 chaebol is, do you think that Hyundai is a chaebol?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: Again, I'd be guessing.</p> <p>21 Q (BY MR. KILBORN:) I've heard it referred to</p> <p>22 as a chaebol. Have you heard that?</p> <p>23 A Just in newspapers that I've read.</p> <p style="text-align: right;">65</p>	<p>1 Q (BY MR. KILBORN:) And did you read where, I</p> <p>2 think, he got six years in prison but then he was let</p> <p>3 out because he was so important to the company?</p> <p>4 A Yes.</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 Q (BY MR. KILBORN:) Or the country?</p> <p>7 A I did read that.</p> <p>8 Q Okay. And did you read where he apologized</p> <p>9 to the country for his criminal acts?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 Q (BY MR. KILBORN:) And did you read that he</p> <p>13 and his son own sixty percent of Glovis?</p> <p>14 A I didn't remember that part.</p> <p>15 Q Did you -- Did you remember that his son and</p> <p>16 he as part of this apology had given the sixty percent</p> <p>17 of Glovis that they own to some charity?</p> <p>18 BY MR. SCOFIELD: Object to the form.</p> <p>19 THE WITNESS: No.</p> <p>20 Q (BY MR. KILBORN:) Would it be correct to say</p> <p>21 then that you, Wendy Warner, have no knowledge about</p> <p>22 the legal, financial structure of HMMA, HMA or HMC?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">67</p>
<p>1 Q And what type of newspapers have you read?</p> <p>2 A I read some of the Korean newspapers to stay</p> <p>3 current with Hyundai.</p> <p>4 Q Okay. Are they translated into English?</p> <p>5 A Yeah.</p> <p>6 Q Are they made available by the expats or HMA</p> <p>7 or HMMA?</p> <p>8 A No, just my own research.</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: My own information.</p> <p>11 Q (BY MR. KILBORN:) Okay. And have you read</p> <p>12 that Hyundai is an authoritarian management structure?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: I have not read that.</p> <p>15 Q (BY MR. KILBORN:) Have you read anything</p> <p>16 about the corporate structure of the various Hyundai</p> <p>17 corporations?</p> <p>18 A No.</p> <p>19 Q Did you read about Chairman Chung's</p> <p>20 indictment and conviction for embezzlement and other</p> <p>21 crimes?</p> <p>22 A Yes.</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">66</p>	<p>1 THE WITNESS: Yes.</p> <p>2 Q (BY MR. KILBORN:) And that you have no</p> <p>3 knowledge about the business structure of those</p> <p>4 companies except what you know about the human</p> <p>5 resources --</p> <p>6 A Yes.</p> <p>7 Q -- department?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 Q (BY MR. KILBORN:) So you, Wendy Warner, are</p> <p>10 strictly a human resources person within HMMA?</p> <p>11 A Yes.</p> <p>12 Q You don't have access to legal matters,</p> <p>13 financial matters, accounting matters, supply</p> <p>14 matters --</p> <p>15 A No.</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 Q (BY MR. KILBORN) -- manufacturing matters,</p> <p>18 any other operational matters at all?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: Yes, that's correct.</p> <p>21 Q (BY MR. KILBORN:) And this isn't an</p> <p>22 endurance test, so any time you want to get up and take</p> <p>23 a break, let me know.</p> <p style="text-align: right;">68</p>

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<p>1 A Thank you.</p> <p>2 Q I'll be glad to accommodate you.</p> <p>3 I think a gentleman involved in the firing of</p> <p>4 Mr. Dees was Mr. Prater?</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 THE WITNESS: Mr. Prater was an assistant</p> <p>7 manager so my understanding is that he is -- was his</p> <p>8 supervisor, but he was not working the night in</p> <p>9 question.</p> <p>10 Q (BY MR. KILBORN:) Okay. And your lawyers</p> <p>11 have been kind enough to give us his personnel file,</p> <p>12 which I have, but we've asked that it be updated and I</p> <p>13 haven't got that yet so I don't have to ask you about</p> <p>14 that.</p> <p>15 Is Mr. Prater no longer with the company?</p> <p>16 A That's correct.</p> <p>17 Q And when did he separate?</p> <p>18 A It's been recently, but it all kind of runs</p> <p>19 together. I'm sorry, I don't recall the exact date,</p> <p>20 but it has been recently.</p> <p>21 Q What was the reason for his separation?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: He was offered another</p> <p style="text-align: right;">69</p>	<p>1 Q He's an expat.</p> <p>2 And what is his title?</p> <p>3 A Vice president for human resources and</p> <p>4 administration.</p> <p>5 Q And how long has he been your immediate</p> <p>6 superior?</p> <p>7 A One year.</p> <p>8 Q And before him?</p> <p>9 A Director of human resources, Greg Kimble.</p> <p>10 Q K-I-M-B-L-E?</p> <p>11 A Uh-huh.</p> <p>12 Q Did he leave the company, Mr. Kimble?</p> <p>13 A He's on medical leave.</p> <p>14 Q Medical leave?</p> <p>15 A Uh-huh.</p> <p>16 Q And Mr. Ryu, is that his American name?</p> <p>17 A That's his formal Korean name.</p> <p>18 Q And what do you refer to him as?</p> <p>19 A Mr. Ryu.</p> <p>20 Q So he hasn't adopted an American name?</p> <p>21 A No.</p> <p>22 Q And who does Mr. Ryu work for?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">71</p>
<p>1 opportunity in Tennessee closer to his family.</p> <p>2 Q (BY MR. KILBORN:) Okay. And as far as you</p> <p>3 know, that's what happened?</p> <p>4 A Yes, sir.</p> <p>5 Q So Mr. Prater and HMMA departed on good terms</p> <p>6 as far as you know?</p> <p>7 A Yes.</p> <p>8 Q And there's a -- I think there's a</p> <p>9 Mr. Brookshire that has some knowledge?</p> <p>10 A Yes.</p> <p>11 Q Is he still with the company?</p> <p>12 A He is.</p> <p>13 Q And Mr. Applegate?</p> <p>14 A Yes, he is.</p> <p>15 Q Still with the company?</p> <p>16 A Uh-huh.</p> <p>17 Q Who is your immediate superior?</p> <p>18 A I report to a vice president for human</p> <p>19 resources, B. W. Ryu, R-Y-U.</p> <p>20 Q D. W. R-Y-U?</p> <p>21 A B as in boy, W, Ryu, R-Y-U.</p> <p>22 Q Is he an expat?</p> <p>23 A He's an expat.</p> <p style="text-align: right;">70</p>	<p>1 THE WITNESS: He works for the president. He</p> <p>2 reports to the president, Mr. Ahn.</p> <p>3 Q (BY MR. KILBORN:) Mr. Ahn?</p> <p>4 A Yes.</p> <p>5 Q Okay. What company employs Mr. Ryu?</p> <p>6 A HMC.</p> <p>7 Q You don't see his paycheck?</p> <p>8 A No.</p> <p>9 Q Do the expats get paid in U.S. dollars?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: I don't do the payroll, but I</p> <p>12 believe they do.</p> <p>13 Q (BY MR. KILBORN:) Do the -- Do the suppliers</p> <p>14 get paid in U.S. dollars?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 Q (BY MR. KILBORN:) Do they get paid -- Strike</p> <p>18 that.</p> <p>19 What is the Korean -- South Korean form of</p> <p>20 money?</p> <p>21 A Won.</p> <p>22 Q Does anybody get paid in Won?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">72</p>

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<p>1 THE WITNESS: Not that I'm aware.</p> <p>2 Q (BY MR. KILBORN:) Do you know anything about</p> <p>3 any agreements of any type between HMC, HMA or HMMA?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: I don't understand the</p> <p>6 question, I'm sorry.</p> <p>7 Q (BY MR. KILBORN:) Do you have any knowledge</p> <p>8 of any contracts or agreements between those three</p> <p>9 companies?</p> <p>10 A No.</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 Q (BY MR. KILBORN:) Do you have any knowledge</p> <p>13 of any management agreements, stock option agreements,</p> <p>14 labor agreements between any of those companies?</p> <p>15 A No.</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 Q (BY MR. KILBORN:) Is the Hyundai plant</p> <p>18 unionized?</p> <p>19 A No.</p> <p>20 BY MR. SPORT: Congratulations.</p> <p>21 THE WITNESS: Thank you.</p> <p>22 Q (BY MR. KILBORN:) So there's no collective</p> <p>23 bargaining agreements?</p> <p style="text-align: right;">73</p>	<p>1 us.</p> <p>2 Q (BY MR. KILBORN:) Okay. Are the expats only</p> <p>3 by green cards?</p> <p>4 A No.</p> <p>5 Q What kind of Visa do they have?</p> <p>6 A L1s.</p> <p>7 Q L1?</p> <p>8 A Yeah.</p> <p>9 Q What's an L1?</p> <p>10 A An L1 is a particular period of time that</p> <p>11 they're allowed to work here, but a green card would be</p> <p>12 a permanent residence, which none of them are.</p> <p>13 Q So you handle the L1s for the expats?</p> <p>14 A I have a staff member that does, but it is</p> <p>15 under my authority, yes.</p> <p>16 Q Okay. And the other types of things that you</p> <p>17 handle for these expats are health insurance?</p> <p>18 A Yes.</p> <p>19 Q Retirement accounts?</p> <p>20 A They do not participate in our 401K.</p> <p>21 Q Any other types of things?</p> <p>22 A If they have questions about their health</p> <p>23 insurance coverage, if they have questions about the</p> <p style="text-align: right;">75</p>
<p>1 A That would be correct.</p> <p>2 Q Have you worked for a company that had</p> <p>3 collective bargaining agreements?</p> <p>4 A Yes.</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 Q (BY MR. KILBORN:) Do you know -- Do you have</p> <p>7 any knowledge of any employment agreements between any</p> <p>8 employees of HMA, HMC or HMMA outside of the team</p> <p>9 member agreements which would be the Americans?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: I'm sorry, I don't understand</p> <p>12 the question.</p> <p>13 Q (BY MR. KILBORN:) Are there any employment</p> <p>14 agreements between employees of HMC, HMA or HMMA?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: Not that I'm aware of, no.</p> <p>17 Q (BY MR. KILBORN:) Do you know what the terms</p> <p>18 of any of the expats are -- terms of employment of any</p> <p>19 of the expats are?</p> <p>20 BY MR. SCOFIELD: Object to the form.</p> <p>21 THE WITNESS: I don't know what the terms</p> <p>22 are. I do handle the Visas, but I -- just from the</p> <p>23 terms of the time period that they're going to be with</p> <p style="text-align: right;">74</p>	<p>1 bills, we help them with that, but they primarily work</p> <p>2 through our HR coordinator if they have other issues.</p> <p>3 Q Do you know whether or not HMC, HMA or HMMA</p> <p>4 or any other Hyundai affiliate filed consolidated</p> <p>5 income tax returns?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: No, I do not know that.</p> <p>8 Q (BY MR. KILBORN:) Don't know that?</p> <p>9 A No.</p> <p>10 Q Do you know whether or not any of those three</p> <p>11 companies or their affiliates filed -- or have</p> <p>12 consolidated financial statements?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: I would not know.</p> <p>15 Q (BY MR. KILBORN:) Do you know anything about</p> <p>16 how HMC, HMA or HMMA finance or even if they finance</p> <p>17 any of their operations?</p> <p>18 BY MR. SCOFIELD: Object to the form.</p> <p>19 THE WITNESS: No.</p> <p>20 Q (BY MR. KILBORN:) Do you know whether or not</p> <p>21 any of those three companies borrowed money from each</p> <p>22 other?</p> <p>23 BY MR. SCOFIELD: Same objection.</p> <p style="text-align: right;">76</p>

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<p>1 THE WITNESS: I don't know.</p> <p>2 Q (BY MR. KILBORN:) Do you know anything about</p> <p>3 the capital structure of any of those three companies?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: No.</p> <p>6 Q (BY MR. KILBORN:) Do you know anything about</p> <p>7 the corporate citizenship of any of those companies?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: I don't understand the</p> <p>10 question, corporate citizenship.</p> <p>11 Q (BY MR. KILBORN:) Where they are</p> <p>12 incorporated?</p> <p>13 A No.</p> <p>14 Q Do you know where any of those companies are</p> <p>15 qualified to do business?</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 THE WITNESS: Again, from the standpoint of</p> <p>18 seeing the information from Chad Griffon that we were</p> <p>19 incorporated in Delaware as well as HMA is incorporated</p> <p>20 in Fountain Valley, California, which I have been</p> <p>21 there, as well as also have visited HMC in Seoul, Korea</p> <p>22 for three weeks so I have visually seen those</p> <p>23 particular areas.</p> <p style="text-align: right;">77</p>	<p>1 Q -- does it come to HMMA's post office box?</p> <p>2 BY MR. SCOFIELD: Object to the form.</p> <p>3 THE WITNESS: Initially, until they are</p> <p>4 settled into their residence, 700 Hyundai Boulevard,</p> <p>5 but once they get out of temporary housing and have</p> <p>6 established a residence, they get their mail at the</p> <p>7 address.</p> <p>8 Q (BY MR. KILBORN:) Their business mail?</p> <p>9 A Business mail, I'm sorry, I don't understand.</p> <p>10 Q Well, I assume Mr. Ahn or Mr. Kim or Mr. Ryu</p> <p>11 would get business mail?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: They would get mail from HMC or</p> <p>14 business mail.</p> <p>15 Q (BY MR. KILBORN:) Or anybody?</p> <p>16 A They all have mailboxes that if they -- if</p> <p>17 mail is delivered, it's delivered to their desk.</p> <p>18 Q To where?</p> <p>19 A To their desk.</p> <p>20 Q To their desk?</p> <p>21 A Uh-huh.</p> <p>22 Q So the mail of all of the expats is delivered</p> <p>23 to --</p> <p style="text-align: right;">79</p>
<p>1 Q (BY MR. KILBORN:) Okay. Do you know what</p> <p>2 other states -- Strike that.</p> <p>3 Does HMA have a phone number in Alabama?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: Not that I'm aware of.</p> <p>6 Q (BY MR. KILBORN:) Does HMMA have a phone</p> <p>7 number?</p> <p>8 A In Alabama, yeah, lots of phone numbers.</p> <p>9 Q What is it?</p> <p>10 A The main number, 387-8000.</p> <p>11 Q 334?</p> <p>12 A Uh-huh.</p> <p>13 Q Does HMA use that phone number?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: No.</p> <p>16 Q (BY MR. KILBORN:) Does HMA have an address</p> <p>17 in Alabama?</p> <p>18 A No.</p> <p>19 Q How about HMC?</p> <p>20 A No.</p> <p>21 Q When, for instance, the expats get their</p> <p>22 mail -- I assume they get mail?</p> <p>23 A Uh-huh.</p> <p style="text-align: right;">78</p>	<p>1 A Business mail.</p> <p>2 Q -- business mail is delivered to --</p> <p>3 A A mailroom and then distributed.</p> <p>4 Q -- 700 Hyundai Drive?</p> <p>5 A Uh-huh. But then personal would be delivered</p> <p>6 to their home once they establish a residence.</p> <p>7 Q Sure. So the -- Strike that.</p> <p>8 How about E-mail?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: We have HMMA E-mail accounts</p> <p>11 Q (BY MR. KILBORN:) Does HMA have E-mail</p> <p>12 accounts?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: Yes.</p> <p>15 Q (BY MR. KILBORN:) And HMC?</p> <p>16 A Yes.</p> <p>17 Q I didn't see -- Maybe I'm wrong, but I didn't</p> <p>18 see E-mails in Mr. Dees' personnel file. Are there</p> <p>19 E-mail transmissions regarding Mr. Dees?</p> <p>20 BY MR. SCOFIELD: Object to the form.</p> <p>21 THE WITNESS: It would be in the team</p> <p>22 relations file.</p> <p>23 Q (BY MR. KILBORN:) Team relations file?</p> <p style="text-align: right;">80</p>

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<p>1 A Uh-huh.</p> <p>2 Q Can we actually identify that and mark that?</p> <p>3 A That's the maintenance file, that's the team</p> <p>4 relations file -- That's the team relations file there.</p> <p>5 Q Why don't you hand us this and we'll mark it</p> <p>6 as an exhibit and then you can tell me what it is.</p> <p>7 A Okay.</p> <p>8 Q So you've handed me a blue file and we'll</p> <p>9 mark that as Exhibit 1.</p> <p>10 And tell me what that is.</p> <p>11</p> <p>12 (Whereupon, Plaintiff's Exhibit 1 was marked</p> <p>13 for identification and copy of same is</p> <p>14 attached hereto.)</p> <p>15</p> <p>16 THE WITNESS: This is a file that's</p> <p>17 maintained by team relations. It's a separate section</p> <p>18 within human resources. It's the investigation notes</p> <p>19 pertaining to Mr. Dees. This is an E-mail from the</p> <p>20 senior manager in plant engineering, the head of</p> <p>21 department to the assistant manager in team relations.</p> <p>22 This is a memo from the team rep -- the team relations</p> <p>23 representative that oversaw the stamping area regarding</p> <p style="text-align: right;">81</p>	<p>1 Q (BY MR. KILBORN:) I'm marking as Exhibit 2 a</p> <p>2 green folder.</p> <p>3 Could you identify that, just what is it?</p> <p>4</p> <p>5 (Whereupon, Plaintiff's Exhibit 2 was marked</p> <p>6 for identification and copy of same is</p> <p>7 attached hereto.)</p> <p>8</p> <p>9 THE WITNESS: Again, it appears to be notes</p> <p>10 regarding the investigation from our team relations</p> <p>11 section in human resources.</p> <p>12 Q (BY MR. KILBORN:) Rather than going through</p> <p>13 each document in there, does that green file, Exhibit</p> <p>14 2, have a name?</p> <p>15 A It's a team relations folder that is</p> <p>16 maintained in team relations.</p> <p>17 Q And how is that different than Exhibit 1?</p> <p>18 A I don't know. It looks to me like one is a</p> <p>19 copy and one is the original.</p> <p>20 Q And you don't know how that happened?</p> <p>21 A No, sir.</p> <p>22 Q And there's no significance to the colors?</p> <p>23 A Not that I'm aware of, no.</p> <p style="text-align: right;">83</p>
<p>1 the interview that he had. These are notes also</p> <p>2 pertaining to the investigation.</p> <p>3 Q (BY MR. KILBORN:) I believe those are</p> <p>4 Mr. Brookshire's notes; is that right?</p> <p>5 A It looks like it's Applegate, that he had an</p> <p>6 interview with Jim Brookshire.</p> <p>7 This is, again, an E-mail from the senior</p> <p>8 manager in engineering to the AM in team relations,</p> <p>9 same thing.</p> <p>10 Q I tell you what, since the record won't</p> <p>11 reflect what you're referring to, why don't we just</p> <p>12 mark the files and then I'll go --</p> <p>13 A That's fine.</p> <p>14 Q And each document will have a Bates Number</p> <p>15 ultimately and then I'll refer to that.</p> <p>16 A Sure.</p> <p>17 BY MR. SCOFIELD: Vince, if I may interject,</p> <p>18 it appears that this is another team relations file</p> <p>19 which contains the same information but does include</p> <p>20 the original handwritten statement and it's in a green</p> <p>21 jacket and I would suggest that you mark that as</p> <p>22 Exhibit Number 2.</p> <p>23 BY MR. KILBORN: I'll do that. Thank you.</p> <p style="text-align: right;">82</p>	<p>1 Q And why don't we mark the next file as</p> <p>2 Exhibit 3. This is a Manila file folder.</p> <p>3 Could you tell me what Exhibit 3 is? It's</p> <p>4 got a little sticky on the front.</p> <p>5</p> <p>6 (Whereupon, Plaintiff's Exhibit 3 was marked</p> <p>7 for identification and copy of same is</p> <p>8 attached hereto.)</p> <p>9</p> <p>10 THE WITNESS: Again, this is a team relations</p> <p>11 file in regards to the peer-review board.</p> <p>12 Q (BY MR. KILBORN:) Generally, how is that</p> <p>13 different from Exhibits 1 and 2?</p> <p>14 A This is the investigation. And then the team</p> <p>15 member has the option to request a peer review, so this</p> <p>16 isn't a mandatory situation. This is the documents</p> <p>17 from the investigation, this is the initial request for</p> <p>18 the team-review board, but the team member did not</p> <p>19 pursue that request.</p> <p>20 Q All right. And the one that you're referring</p> <p>21 to now is Exhibit 3?</p> <p>22 A Yes, sir.</p> <p>23</p> <p style="text-align: right;">84</p>

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<p>1 (Whereupon, Plaintiff's Exhibit 4 was marked 2 for identification and copy of same is 3 attached hereto.) 4 5 Q (BY MR. KILBORN:) And then Exhibit 4 is 6 another green file, what is that? 7 A This is the personnel record and this is kept 8 in the employment section as the -- Mr. Dees' official 9 personnel file. 10 Q And that's kept under your control and 11 supervision? 12 A That's correct. 13 14 (Whereupon, Plaintiff's Exhibit 5 was marked 15 for identification and copy of same is 16 attached hereto.) 17 18 Q (BY MR. KILBORN:) And Exhibit 5 is something 19 that your counsel handed me this morning. It says: 20 For Jeff, additional documents, Bates numbers to 21 follow. 22 Could you just identify that stack for me? 23 BY MR. SCOFIELD: And, Vince, I'll interject</p> <p style="text-align: right;">85</p>	<p>1 Q (BY MR. KILBORN:) And you say we, who do you 2 mean? 3 A HMMA. 4 Q And who approves that? 5 A Quality has the responsibility for the system 6 and then each department is responsible for updating, 7 correcting the policies, procedures or forms. 8 Q When you say quality, is that a -- 9 A It's a department. 10 Q A department -- 11 A Quality assurance is the department. 12 Q Does that have an expat as the -- 13 A No, it has an American director. 14 Q Okay. The various forms like this, who 15 developed those originally? 16 BY MR. SCOFIELD: Object to the form. 17 THE WITNESS: The original forms were 18 developed by the folks that were hired early on, so 19 myself, the team relations manager, the director of HR, 20 the vice president for the plant and then in an 21 advisory role, our legal counsel. 22 Q (BY MR. KILBORN:) Okay. The vice president 23 of the plant --</p> <p style="text-align: right;">87</p>
<p>1 that to the extent that it appeared that any original 2 document had not been produced from the stacks which 3 you've previously marked, I photocopied them and am 4 producing them today. We'll follow with official Bates 5 numbers as soon as I get back to my office. 6 BY MR. KILBORN: That's fine. And I'm sure 7 that was an oversight. I don't have any problem with 8 that. 9 THE WITNESS: These appear to be some notes 10 from team relations. The back area is the interview 11 guide for initial employment that's in the personnel 12 file. 13 Q (BY MR. KILBORN:) Thank you. 14 I notice in referring to Exhibit 1, that's a 15 team relations file, it looks like printouts called 16 team relations memo. It appears that this is part of 17 some manual or something. It's a printed form. Am I 18 guessing right at that? 19 BY MR. SCOFIELD: Object to the form. 20 THE WITNESS: It's not a manual. We have a 21 document control system that all documents need to have 22 this header and it has to be an approved document for 23 us to be able to use it.</p> <p style="text-align: right;">86</p>	<p>1 A For production. 2 Q -- what's his name? 3 A John Kalson. 4 Q Did any of the expats participate in 5 developing that? 6 BY MR. SCOFIELD: Object to the form. 7 THE WITNESS: They reviewed it and provided 8 input, but really didn't have a lot of familiarity with 9 most of the policies and procedures that were 10 developed. 11 Q (BY MR. KILBORN:) And was the Hyundai plant 12 here in Montgomery the first plant that Hyundai built 13 in the United States? 14 A Yes, in the United States. 15 Q So from your observation, did it appear to 16 you that the expats that you spoke to early on did not 17 have much familiarity with United States laws, 18 regulations regarding your specialty, human resources? 19 BY MR. SCOFIELD: Object to the form. 20 THE WITNESS: Again, just as we have 21 Americans that have more familiarity than others, it's 22 the same situation; some very knowledgeable, others not 23 so knowledgeable.</p> <p style="text-align: right;">88</p>

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<p>1 Q (BY MR. KILBORN:) Ultimately, were all of 2 the employment related forms approved by HMC? 3 A HMC did not -- 4 BY MR. SCOFIELD: Object to the form. 5 THE WITNESS: -- review the forms. It was 6 reviewed by our management team, again, and our legal 7 counsel. They did have the opportunity to review it 8 and provide input, but they never went to HMC to be 9 approved. 10 Q (BY MR. KILBORN:) Did they provide a comment 11 back? 12 BY MR. SCOFIELD: Object to the form. 13 THE WITNESS: Sure, comments as well as 14 wanting to understand because that's one of the roles 15 that they're here for, is to learn and to be able to 16 have a good understanding of American law. That's one 17 reason why they're here, to learn. 18 Q (BY MR. KILBORN:) And that would be even 19 true today? 20 A Of course. 21 Q Do you teach them employment law? 22 BY MR. SCOFIELD: Object to the form. 23 THE WITNESS: I do have orientation with all</p> <p style="text-align: right;">89</p>	<p>1 Q (BY MR. KILBORN:) And is that like a tree 2 with a person at the top coming down? 3 A Sure. 4 Q You're in the middle of the tree somewhere? 5 A Yes. 6 Q Who's at the top where the star of the 7 Christmas tree goes? 8 BY MR. SCOFIELD: Object to the form. 9 THE WITNESS: President. 10 Q (BY MR. KILBORN:) That would be Mr. Ahn? 11 A Mr. Ahn. 12 Q Okay. But he's not employed by HMMA? 13 A Correct. 14 Q Why is he at the top of the organizational 15 chart of HMMA? 16 BY MR. SCOFIELD: Object to the form. 17 THE WITNESS: He's been assigned to this 18 facility to oversee HMMA. 19 Q (BY MR. KILBORN:) Any other non-HMMA 20 employees in that organizational chart? 21 A CFO, Jason Lee; H. I. Kim, the COO. And then 22 there's coordinators at each level. 23 Q What is the purpose of making up the</p> <p style="text-align: right;">91</p>
<p>1 of our coordinators that come in in terms of what our 2 policies and procedures are and what is acceptable at 3 HMMA. They do go over -- We go over the handbook as 4 well as all of our policies and procedures, they sign 5 up for benefits just like all of our folks do before 6 joining. 7 Q (BY MR. KILBORN:) Do you have any knowledge 8 of any financial or other filings that HMC, HMMA or HMA 9 have made with any state or federal authority? 10 BY MR. SCOFIELD: Object to the form. 11 THE WITNESS: I don't. 12 Q (BY MR. KILBORN:) Have you ever seen any 13 type of organizational chart related to the three 14 companies that I just mentioned? 15 A No. I'm responsible for the organizational 16 charts for HMMA only. 17 Q Okay. So there are organizational charts for 18 HMMA? 19 A Yes. 20 Q And when did you develop those? 21 BY MR. SCOFIELD: Object to the form. 22 THE WITNESS: They are ongoing. As changes 23 are made, we update them all the time.</p> <p style="text-align: right;">90</p>	<p>1 organizational chart? 2 BY MR. SCOFIELD: Object to the form. 3 THE WITNESS: It's tied primarily to our open 4 headcount, so we do it as a way of knowing which 5 positions are open as well as within our system. We 6 can't enter a new hire without a particular code that 7 shows that that position is open and available to be 8 filled, so it's a tracking mechanism for headcount 9 purposes. 10 Q (BY MR. KILBORN:) Is there an organizational 11 chart which governs the entire Hyundai Automotive 12 Group? 13 BY MR. SCOFIELD: Object to the form. 14 THE WITNESS: Not that I have seen. As I 15 said, I only -- my scope is HMMA. 16 Q (BY MR. KILBORN:) Okay. Were you told to 17 make the organizational chart or was that something 18 that you did on your own? 19 BY MR. SCOFIELD: Object to the form. 20 THE WITNESS: It's a normal practice within 21 human resources, but in order to be able to track 22 headcount, it's a normal business practice that I 23 started when I arrived.</p> <p style="text-align: right;">92</p>

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<p>1 Q (BY MR. KILBORN:) Okay. Is that a 2 confidential chart? 3 BY MR. SCOFIELD: Object to the form. 4 THE WITNESS: It is confidential from the 5 standpoint of external. And management typically has 6 that information, but below that, it is considered 7 confidential. It's available, but it is confidential. 8 Q (BY MR. KILBORN:) We've got a confidential 9 protective order in this case that protects 10 confidential, sensitive type information. Would you 11 have any objection to producing that under that? 12 BY MR. SCOFIELD: Object to the form. That's 13 not Ms. Warner's decision to make. You can ask her the 14 question, but it's not -- 15 BY MR. KILBORN: Are you instructing her not 16 to answer. 17 BY MR. SCOFIELD: I'm not instructing her not 18 to answer, I'm just informing you that it's not her 19 decision to make. 20 Q (BY MR. KILBORN:) Would you, Wendy Warren, 21 have any objection? 22 A I would not. 23 Q Do you keep the personnel files of the people</p> <p style="text-align: right;">93</p>	<p>1 organizational chart? 2 A I don't know him. I'm sorry, I'd have to 3 check that. I'm not familiar with that particular 4 coordinator. 5 Q So would it be true that you keep a limited 6 personnel file on the expats? 7 A Yes. 8 Q Limited by what you told me about a minute 9 ago? 10 A Yes. 11 Q And as far as you know, HMC keeps the main 12 personnel file? 13 A That's correct. 14 Q Let's mark, if we can, your declaration. 15 Take a look at that declaration, Ms. Warner. I'm going 16 to mark that as Exhibit 6. 17 And is that your signature? 18 19 (Whereupon, Plaintiff's Exhibit 6 was marked 20 for identification and copy of same is 21 attached hereto.) 22 23 THE WITNESS: Yes.</p> <p style="text-align: right;">95</p>
<p>1 in that organizational chart who are not employed by 2 HMMA? 3 BY MR. SCOFIELD: Object to the form. 4 THE WITNESS: We keep a separate file for 5 their Visas and immigration information and personal 6 information in case of an emergency. 7 Q (BY MR. KILBORN:) How about, for instance, 8 their employment application? 9 A No. 10 Q So it would be a very limited personnel file? 11 A Yes. 12 Q Where is the real personnel file kept? 13 BY MR. SCOFIELD: Object to the form. 14 THE WITNESS: HMC. 15 Q (BY MR. KILBORN:) In Seoul, South Korea? 16 A That's correct. 17 Q Do you know why you don't keep that? 18 BY MR. SCOFIELD: Object to the form. 19 THE WITNESS: One, I wouldn't be able to read 20 it, it's all in Korea, but, two, those individuals work 21 for HMC so their personnel files are retained at their 22 headquarters. 23 Q (BY MR. KILBORN:) Is Mr. Mun in that</p> <p style="text-align: right;">94</p>	<p>1 Q (BY MR. KILBORN:) And did you draft this? 2 A No. 3 Q Who drafted this? 4 A Chad Griffon. 5 Q Who? 6 A Chad Griffon, legal counsel, internal. 7 Q You told me about him. 8 Did you know why you were presented with 9 this? 10 BY MR. SCOFIELD: Object to the form. 11 THE WITNESS: Yes. 12 Q (BY MR. KILBORN:) Why? 13 A He told me that it had been requested and it 14 was a declaration and he went over the information with 15 me and also shared with me the information in terms of 16 the incorporation and the state department here in 17 Alabama. 18 BY MR. SCOFIELD: Again, Wendy, with regard 19 to any specific communication made by Mr. Griffon, I'm 20 going to instruct you not to answer in order to 21 preserve any applicable privilege. 22 THE WITNESS: Yes, sir. 23 Q (BY MR. KILBORN:) Were you shown any</p> <p style="text-align: right;">96</p>

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<p>1 documents?</p> <p>2 A No.</p> <p>3 Q So whatever Mr. Griffon told you about the</p> <p>4 corporations which you've told us about, that came from</p> <p>5 him verbally, not through documents that you saw?</p> <p>6 A He did share with me the sheet and showed it</p> <p>7 to me, that it was printed off the Internet.</p> <p>8 Q The sheet?</p> <p>9 A That showed the declaration.</p> <p>10 BY MR. SPORT: They gave me this this morning</p> <p>11 which is in response to our duces tecum and provided</p> <p>12 these documents. You want to take a five-minute break</p> <p>13 and look at them?</p> <p>14 BY MR. KILBORN: Is this something new?</p> <p>15 BY MR. SCOFIELD: In response to the duces</p> <p>16 tecum request.</p> <p>17 BY MR. KILBORN: They have been Bates</p> <p>18 numbered. Why don't we just mark these as our next</p> <p>19 exhibit, 7.</p> <p>20 BY MR. SPORT: Mark it with the written</p> <p>21 response, too?</p> <p>22 BY MR. KILBORN: Yeah, we can do that.</p> <p>23 Q (BY MR. KILBORN:) I'm going to mark as</p> <p style="text-align: right;">97</p>	<p>1 the defendant.</p> <p>2 THE WITNESS: This is our whole handbook.</p> <p>3 That's the handbook and then the two forms for what I</p> <p>4 was describing earlier.</p> <p>5 Q (BY MR. KILBORN:) For purposes of our</p> <p>6 deposition and clarity in the record, why don't you</p> <p>7 give us these little Bates numbers down at the bottom?</p> <p>8 A The 0004?</p> <p>9 Q Yes.</p> <p>10 Could you just give us those Bates numbers of</p> <p>11 those documents?</p> <p>12 A The ones that we just talked about?</p> <p>13 Q Yes.</p> <p>14 A 0001 and 0004.</p> <p>15 Q 1, and what was the other one?</p> <p>16 A 0004.</p> <p>17 Q 0001 and 0004?</p> <p>18 A Uh-huh.</p> <p>19 BY MR. SCOFIELD: And to clarify, Wendy, are</p> <p>20 those the Secretary of State filings that you</p> <p>21 referenced?</p> <p>22 THE WITNESS: Yes, sir.</p> <p>23 Q (BY MR. KILBORN:) Okay. And those two, 001</p> <p style="text-align: right;">99</p>
<p>1 Exhibit 7 a document called Defendant, HMMA, response</p> <p>2 objections to Rule 30(b)(5) Exhibit A request attached</p> <p>3 to amended deposition notice of Wendy Warner which has</p> <p>4 some attachments.</p> <p>5 And, Ms. Warner, I've just been handed this.</p> <p>6 If you don't mind, I want to just show it to you. I'll</p> <p>7 leave the sticky that says: To Jeff. That's this</p> <p>8 handsome gentleman next to me. I'll just ask you to</p> <p>9 look at the attachments and tell me if those may be</p> <p>10 things that you were talking about that you were shown.</p> <p>11</p> <p>12 (Whereupon, Plaintiff's Exhibit 7 was marked</p> <p>13 for identification and copy of same is</p> <p>14 attached hereto.)</p> <p>15</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 THE WITNESS: Yes, that's what was shared,</p> <p>18 yes.</p> <p>19 Q (BY MR. KILBORN:) Take your time.</p> <p>20 A This looks like our handbook.</p> <p>21 BY MR. SCOFIELD: And, Vince, for the record,</p> <p>22 I'll state with regard to that exhibit, the documents</p> <p>23 were prepared by -- or compiled by me as counsel for</p> <p style="text-align: right;">98</p>	<p>1 and 004, were Secretary of State filings that</p> <p>2 Mr. Griffon showed you --</p> <p>3 A Yes.</p> <p>4 Q -- that you based your affidavit on --</p> <p>5 A That's right.</p> <p>6 Q -- or your declaration?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 Q (BY MR. KILBORN:) Now, the balance of the</p> <p>9 documents in there, did you identify them as a manual?</p> <p>10 A Yeah, it's our handbook as well as --</p> <p>11 Q Handbook?</p> <p>12 A Yeah.</p> <p>13 -- information taken off of our web site.</p> <p>14 This here is 002. That's taken off of our</p> <p>15 web site.</p> <p>16 Q Were you shown that by --</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 Q (BY MR. KILBORN) -- Mr. Griffon?</p> <p>19 A No. I helped create this.</p> <p>20 Q Okay. And then flip a page and let's get the</p> <p>21 next one.</p> <p>22 A This is also off of the web page.</p> <p>23 Q And that is what number?</p> <p style="text-align: right;">100</p>

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<p>1 A 0003.</p> <p>2 Q 3, okay.</p> <p>3 Did you help create that?</p> <p>4 A Yes.</p> <p>5 And then the handbook is 0005.</p> <p>6 Q And the handbook goes from 5 to what number?</p> <p>7 A All the way to the end, 0054.</p> <p>8 Q 0001, which is the Secretary of State form,</p> <p>9 you didn't know of the existence of that until you were</p> <p>10 given that by Mr. Griffon?</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 THE WITNESS: Yes.</p> <p>13 Q (BY MR. KILBORN:) And you didn't know the</p> <p>14 information on here except by looking at it?</p> <p>15 A Yes.</p> <p>16 Q And the next document, which is the -- which</p> <p>17 is 2, is that what you call the web site?</p> <p>18 A Yes. It's a fact sheet about our company.</p> <p>19 Q Okay. And in that web site, I think you said</p> <p>20 that you assisted in creating it, it talks about</p> <p>21 Hyundai Automotive Group?</p> <p>22 A The other page, it talks about HMMA and the</p> <p>23 number of people hired.</p> <p style="text-align: right;">101</p>	<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 THE WITNESS: No.</p> <p>3 Q (BY MR. KILBORN:) You don't know if it's a</p> <p>4 corporation partnership or what it is?</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 THE WITNESS: No.</p> <p>7 Q (BY MR. KILBORN:) You don't even know if it</p> <p>8 exists?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: As I said, I did visit Seoul.</p> <p>11 I do know that there is a Hyundai Kia corporate</p> <p>12 headquarters and that Chairman Chung oversees the</p> <p>13 Hyundai Automotive Group. That's all I know.</p> <p>14 Q (BY MR. KILBORN:) Is there a sign on the</p> <p>15 building that says Hyundai Automotive Group?</p> <p>16 A Hyundai Kia, Hyundai Kia all the way around.</p> <p>17 Q How about the name Hyundai Automotive Group?</p> <p>18 A As I mentioned, Hyundai Automotive Group is</p> <p>19 just one division. There's many other divisions</p> <p>20 besides that.</p> <p>21 Q A division of what company?</p> <p>22 A Hyundai, HMC.</p> <p>23 Q HMC.</p> <p style="text-align: right;">103</p>
<p>1 Q I apologize for trying to share this with you</p> <p>2 upside-down, but did you help create 0002?</p> <p>3 A Well, we helped with determining the pictures</p> <p>4 from a recruitment standpoint, but the facts would have</p> <p>5 come from PR but we did review it in terms of how it</p> <p>6 would be perceived by applicants and -- from a</p> <p>7 recruiting and employment perspective, yes, but the</p> <p>8 facts would have come from public relations. We did</p> <p>9 review it before it was posted.</p> <p>10 Q Who is public relations?</p> <p>11 A It's a department that is responsible for</p> <p>12 internal and external communication and media</p> <p>13 relations.</p> <p>14 Q And who's over that?</p> <p>15 A Robert Burns.</p> <p>16 Q Is he an employee of HMMA?</p> <p>17 A Yes.</p> <p>18 Q It mentioned -- It mentions Hyundai --</p> <p>19 Hyundai Automotive Group in the fourth bullet point.</p> <p>20 That's the company -- That's whatever entity I asked</p> <p>21 you about earlier.</p> <p>22 A I see.</p> <p>23 Q You don't know what that is?</p> <p style="text-align: right;">102</p>	<p>1 Do you know if -- how it's owned?</p> <p>2 A No.</p> <p>3 Q Do you know who owns it?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: No.</p> <p>6 Q (BY MR. KILBORN:) Do you know any of the</p> <p>7 officers or directors of it?</p> <p>8 A No.</p> <p>9 Q Do you know of any other employees of Hyundai</p> <p>10 Automotive Group?</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 THE WITNESS: No.</p> <p>13 Q (BY MR. KILBORN:) It refers also on Bates</p> <p>14 0002 to Hyundai Motor America. Do you know if Hyundai</p> <p>15 Motor America is a corporation?</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 THE WITNESS: In terms of the declaration</p> <p>18 that I signed and the information that was shared with</p> <p>19 me, I do know that it is incorporated in California and</p> <p>20 I have visited their facility and do have communication</p> <p>21 and working relationships with their HR department.</p> <p>22 Q (BY MR. KILBORN:) What was the purpose of</p> <p>23 you going to California?</p> <p style="text-align: right;">104</p>

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<p>1 A Benchmarking, they were interested in</p> <p>2 learning what we were doing, and information sharing,</p> <p>3 vice-versa.</p> <p>4 Q And you call it benchmarking?</p> <p>5 A Uh-huh.</p> <p>6 Q Do you know if it is incorporated anywhere</p> <p>7 else?</p> <p>8 A I don't.</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 Q (BY MR. KILBORN:) Do you know if it is</p> <p>11 qualified to do business anywhere else?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: I don't.</p> <p>14 Q (BY MR. KILBORN:) Do you even know if it's</p> <p>15 qualified to do business in California?</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 THE WITNESS: Just based on that form that I</p> <p>18 saw.</p> <p>19 Q (BY MR. KILBORN:) Are any HMA employees or</p> <p>20 personnel in Montgomery?</p> <p>21 A Not at this time, no.</p> <p>22 Q What happened to them?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">105</p>	<p>1 Q It was information sharing?</p> <p>2 A Yeah.</p> <p>3 Q And you mentioned that he was on loan?</p> <p>4 A Yes, from HMA.</p> <p>5 Q That's, I think, an employment term. What</p> <p>6 does that mean?</p> <p>7 A That they are able to provide expertise in</p> <p>8 subject matter, expert information, but their benefits</p> <p>9 and pay are still paid and compensated by the home</p> <p>10 company, which HMA paid for all of those services.</p> <p>11 Q Have there been other employees loaned from</p> <p>12 either HMA or HMC?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: HMA, that was the only one. As</p> <p>15 you know, HMC is the expatriates.</p> <p>16 Q (BY MR. KILBORN:) Got you. That's sort of a</p> <p>17 wholesale loan?</p> <p>18 BY MR. SCOFIELD: Object to the form.</p> <p>19 Q (BY MR. KILBORN:) Do you agree?</p> <p>20 A I don't understand what wholesale means.</p> <p>21 Q En masse?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: Again, very familiar with that</p> <p style="text-align: right;">107</p>
<p>1 THE WITNESS: There was one, Keith Duckworth,</p> <p>2 that was on loan from HMA that assisted us in the last</p> <p>3 two years, he left in August, primarily to help bridge</p> <p>4 the gap between the Koreans and Americans and also to</p> <p>5 support our union avoidance campaign.</p> <p>6 Q (BY MR. KILBORN:) Which campaign?</p> <p>7 A Our labor relations.</p> <p>8 Q So union avoidance campaign.</p> <p>9 A Or union free. HMMA is union free.</p> <p>10 Q Right.</p> <p>11 A We wanted to continue to stay that way. He</p> <p>12 had some expertise in that area and he was here to</p> <p>13 support human resources in developing a campaign.</p> <p>14 Q And you call it the union avoidance campaign?</p> <p>15 A Yes, sir.</p> <p>16 Q He stayed here two years?</p> <p>17 A Yes.</p> <p>18 Q Had offices next to you?</p> <p>19 A Yes.</p> <p>20 Q Lived in Montgomery?</p> <p>21 A Yes. He lived in temporary housing. He went</p> <p>22 home on the weekends, but he lived in our temporary</p> <p>23 housing area where we put our relocatees.</p> <p style="text-align: right;">106</p>	<p>1 concept and normal with startup operations.</p> <p>2 Q (BY MR. KILBORN:) Do you know if HMA has a</p> <p>3 Board of Directors?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: No.</p> <p>6 BY MR. SCOFIELD: Asked and answered.</p> <p>7 BY MR. KILBORN: I didn't ask any questions</p> <p>8 about, I don't think, HMA. If I did, I apologize.</p> <p>9 BY MR. SCOFIELD: Oh, if I misunderstood,</p> <p>10 then my apology to you, Vince.</p> <p>11 Q (BY MR. KILBORN:) Does HMA have officers?</p> <p>12 A I don't know.</p> <p>13 Q So you wouldn't know the names of any</p> <p>14 officers if it had them?</p> <p>15 A No, sir.</p> <p>16 Q Does HMA have any directors?</p> <p>17 A I don't know.</p> <p>18 Q So you wouldn't know the names if it did?</p> <p>19 A No.</p> <p>20 Q Does HMA have any members?</p> <p>21 A I don't know.</p> <p>22 Q So you wouldn't know the names if there were</p> <p>23 any?</p> <p style="text-align: right;">108</p>

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<p>1 A No, sir.</p> <p>2 Q Does HMA have bylaws?</p> <p>3 A I don't know.</p> <p>4 Q Does HMMA have bylaws?</p> <p>5 A I guess I would need more of a definition. I</p> <p>6 would be guessing. I don't know what you mean by</p> <p>7 bylaws.</p> <p>8 BY MR. SCOFIELD: Please, don't guess.</p> <p>9 Q (BY MR. KILBORN:) And does HMC have bylaws?</p> <p>10 A I don't know.</p> <p>11 Q Okay. Do you know whether or not HMA, HMC</p> <p>12 and/or HMMA have any common officers?</p> <p>13 A No.</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 Q (BY MR. KILBORN:) Do you know whether or not</p> <p>16 they have any common board members?</p> <p>17 A No.</p> <p>18 Q The web site, Bates Number 0002, which you</p> <p>19 helped create?</p> <p>20 A Pictures.</p> <p>21 Q The pictures.</p> <p>22 A And reviewed.</p> <p>23 Q I think you did make that clear.</p> <p style="text-align: right;">109</p>	<p>1 A Uh-huh.</p> <p>2 Q And do you know why HMMA is giving facts</p> <p>3 about HMC?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: Just as -- from a knowledge</p> <p>6 perspective to understand -- a lot of interest in</p> <p>7 Hyundai and wanting to understand how it was founded</p> <p>8 and how we arrived here in Alabama.</p> <p>9 Q (BY MR. KILBORN:) And I think, what,</p> <p>10 Chairman Chung's father founded Hyundai?</p> <p>11 A That's my understanding, yes.</p> <p>12 Q 1967, does that sound about right?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: I'd be guessing.</p> <p>15 Q (BY MR. KILBORN:) It's been referred to as a</p> <p>16 family dynasty. Would you agree with that?</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 Asked and answered.</p> <p>19 THE WITNESS: I would be guessing.</p> <p>20 Q (BY MR. KILBORN:) And when you say that</p> <p>21 you'd be guessing, what do you mean?</p> <p>22 A It's not -- I have not been totally ingrained</p> <p>23 in HMC. I was there for three weeks, but don't have a</p> <p style="text-align: right;">111</p>
<p>1 You helped with the photographs?</p> <p>2 A Yes, and reviewed the material before it was</p> <p>3 posted on the web site.</p> <p>4 Q And that's called HMC fact sheet?</p> <p>5 A Uh-huh.</p> <p>6 Q Do you know whether or not this information</p> <p>7 on the fact sheet is correct?</p> <p>8 A No.</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 Q (BY MR. KILBORN:) And it's a Hyundai Motor</p> <p>11 Company fact sheet, isn't it?</p> <p>12 A It's an HMMA fact sheet, HMMA USA. See that?</p> <p>13 Q Why does it say HMC fact sheet?</p> <p>14 A Because it's a piece of it to talk about what</p> <p>15 our company is, just like all other companies. Whether</p> <p>16 it's Mercedes or Toyota, they talk about their home</p> <p>17 company. They talk about where it was created and how</p> <p>18 it was founded. Very similar concept at all of our</p> <p>19 other transplants. If you look at Honda, Mercedes,</p> <p>20 Toyota, same scenario.</p> <p>21 Q So this is an HMMA web site --</p> <p>22 A Yes.</p> <p>23 Q -- which is giving facts about HMC?</p> <p style="text-align: right;">110</p>	<p>1 total grasp of the whole history of HMC.</p> <p>2 Q And why were you at HMC in Seoul?</p> <p>3 A All team members were invited to visit for a</p> <p>4 cultural training and I was there with a team of</p> <p>5 thirty, as a chaperone as well as my own learning and</p> <p>6 understanding of HMC as well as their plants, Asan and</p> <p>7 Ulsan.</p> <p>8 Q Other team members from Montgomery went to?</p> <p>9 A Yes. About three hundred a year go.</p> <p>10 Q Team members?</p> <p>11 A Uh-huh.</p> <p>12 Q Is that paid for by human resources of HMMA?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: My understanding is it's paid</p> <p>15 by HMMA. Initially, it was part of the incentive</p> <p>16 package of Alabama.</p> <p>17 BY MR. SCOFIELD: Vince, not to interrupt</p> <p>18 you, but we've been going approximately two hours so</p> <p>19 when you care to take a short break, I would really</p> <p>20 appreciate it.</p> <p>21 BY MR. KILBORN: That's fine. Do you want to</p> <p>22 just take a short break?</p> <p>23 BY MR. SPORT: That's fine.</p> <p style="text-align: right;">112</p>

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<p>1 BY MR. SCOFIELD: Thank you.</p> <p>2</p> <p>3 (Whereupon, there was a recess held in the</p> <p>4 deposition.)</p> <p>5</p> <p>6 Q (BY MR. KILBORN:) Ms. Warner, I apologize</p> <p>7 for skipping around. We've got a bunch to cover.</p> <p>8 This thing on the exhibit, Plaintiff's</p> <p>9 Exhibit 7, we talked about the web site. And the next</p> <p>10 document which has got Bates Number 3, Warner depo doc.</p> <p>11 it's called: Hyundai Motor Manufacturing, Inc.</p> <p>12 information sheet. Is that something that you know</p> <p>13 something about?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: Again, that would be</p> <p>16 information that was shared on the web site and I would</p> <p>17 have reviewed it for clarity for applicants as well as</p> <p>18 the number of team members that we have.</p> <p>19 Q (BY MR. KILBORN:) So the factual part that</p> <p>20 you had knowledge of would be the team member part?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: The population, yes, of HMMA.</p> <p>23 Q (BY MR. KILBORN:) Right. The balance you</p> <p style="text-align: right;">113</p>	<p>1 A I would know that, yes, but the seven hundred</p> <p>2 and fifty-four dealers, I don't know if that's an</p> <p>3 accurate number or not.</p> <p>4 Q Do you know who the seven hundred and</p> <p>5 fifty-four dealers have contracts with?</p> <p>6 A No.</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 Q (BY MR. KILBORN:) Do you know if they're</p> <p>9 independent or if they're company-owned dealerships?</p> <p>10 BY MR. SCOFIELD: Same objection.</p> <p>11 THE WITNESS: I don't know.</p> <p>12 Q (BY MR. KILBORN:) So they could all seven</p> <p>13 hundred and fifty-four be company or seven hundred and</p> <p>14 fifty-four be independently owned?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 Q (BY MR. KILBORN:) Okay. Does Hyundai have</p> <p>18 company-owned dealerships?</p> <p>19 A I don't know.</p> <p>20 Q Do you know what a company-owned dealership</p> <p>21 is?</p> <p>22 A No.</p> <p>23 Q So you don't know whether they do or don't?</p> <p style="text-align: right;">115</p>
<p>1 would not have personal knowledge of, that would be</p> <p>2 somebody else?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: PR would have written that,</p> <p>5 yes.</p> <p>6 Q (BY MR. KILBORN:) And PR would be who again?</p> <p>7 A Robert Burns.</p> <p>8 Q And he works for what company?</p> <p>9 A HMMA.</p> <p>10 Q Okay. In the introductory paragraph in Bates</p> <p>11 Number 3, right here, it says: In the United States,</p> <p>12 sales are managed by Hyundai Motor America and are sold</p> <p>13 and serviced by seven hundred and fifty-four Hyundai</p> <p>14 dealerships nationwide.</p> <p>15 Do you know if that's true?</p> <p>16 A I don't know.</p> <p>17 Q And as you told me before, you don't really</p> <p>18 know what Hyundai Motor America does?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: I do know that they sell and</p> <p>21 deliver vehicles for Hyundai.</p> <p>22 Q (BY MR. KILBORN:) Do you know that the sales</p> <p>23 are managed by HMA?</p> <p style="text-align: right;">114</p>	<p>1 A I don't have any relationship or working</p> <p>2 knowledge of the dealers.</p> <p>3 Q And the payroll of HMMA, you would have some</p> <p>4 knowledge of that?</p> <p>5 A Yes.</p> <p>6 Q Do you cut the checks?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: No.</p> <p>9 Q (BY MR. KILBORN:) Who does that?</p> <p>10 A The section manager for payroll.</p> <p>11 Q Who is that?</p> <p>12 A Scott Gordy.</p> <p>13 Q Is he a vice president?</p> <p>14 A He's the same title as myself, section</p> <p>15 manager.</p> <p>16 Q And what bank are those payroll checks cut</p> <p>17 on?</p> <p>18 A Wachovia.</p> <p>19 Q Is that through a local branch of Wachovia?</p> <p>20 A Yes.</p> <p>21 Q In Montgomery?</p> <p>22 A Yes.</p> <p>23 Q Do you have any knowledge of the bank account</p> <p style="text-align: right;">116</p>

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<p>1 or accounts?</p> <p>2 A No, I just know that we have an ACH,</p> <p>3 electronically transferred to Wachovia. And then</p> <p>4 depending on the routing numbers the team members give</p> <p>5 us, it's deposited into their accounts each Tuesday</p> <p>6 every two weeks.</p> <p>7 Q You used some letters there. You said ACH.</p> <p>8 A ACH, it's an electronic wire.</p> <p>9 Q So the money is wired into the payroll</p> <p>10 account?</p> <p>11 A Yes, from finance.</p> <p>12 Q From who?</p> <p>13 A Finance.</p> <p>14 Q Finance?</p> <p>15 A Finance, treasury department.</p> <p>16 Q Of what company?</p> <p>17 A HMMA.</p> <p>18 Q All right. And is that wire from an HMMA</p> <p>19 account?</p> <p>20 A Yes.</p> <p>21 Q At Wachovia?</p> <p>22 A Yes.</p> <p>23 Q Do you know how the money gets into that</p> <p style="text-align: right;">117</p>	<p>1 THE WITNESS: I don't know that.</p> <p>2 Q (BY MR. KILBORN:) So you don't know, for</p> <p>3 instance, which company's money is put into the HMMA</p> <p>4 bank accounts?</p> <p>5 A No.</p> <p>6 Q As far as you know, Chairman Chung could be</p> <p>7 wiring the money into there?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: I do know that our files all go</p> <p>10 over to HMMA's finance department. I do know that</p> <p>11 there's deadlines that they need to be able to send the</p> <p>12 wire. I do know that there's money in my checking</p> <p>13 account every two weeks from HMMA.</p> <p>14 Q (BY MR. KILBORN:) But you don't know how</p> <p>15 HMMA actually derives any of its revenue?</p> <p>16 A No, sir.</p> <p>17 Q In fact, you don't even know if HMMA even</p> <p>18 reports revenue on a United States income tax return?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: I don't.</p> <p>21 Q (BY MR. KILBORN:) Or a Form 1040, do you?</p> <p>22 A No.</p> <p>23 Q You don't even know whether it files a 1040?</p> <p style="text-align: right;">119</p>
<p>1 account?</p> <p>2 A It's electronically wired from our finance</p> <p>3 department.</p> <p>4 Q Do you know how the money gets in there,</p> <p>5 other than how it electronically gets in there? In</p> <p>6 other words, whose money is it?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: Don't know.</p> <p>9 Q (BY MR. KILBORN:) Do you know who puts the</p> <p>10 money in the payroll account, what company?</p> <p>11 A HMMA, we send the information over to the</p> <p>12 HMMA finance department and it is sent from HMMA</p> <p>13 treasury department to Wachovia.</p> <p>14 Q Do you know how HMMA gets the money that it</p> <p>15 puts in the payroll account?</p> <p>16 A No.</p> <p>17 Q Well, if you don't know how -- if you don't</p> <p>18 know whether or not HMMA gets paid for the vehicles</p> <p>19 that are money gated and the business of HMMA is</p> <p>20 manufacturing Hyundai vehicles, how do you know that</p> <p>21 HMMA derives any revenue from the manufacturing of</p> <p>22 those vehicles?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">118</p>	<p>1 A I do not.</p> <p>2 Q Because if a corporation or an L.L.C. doesn't</p> <p>3 have revenue, then it normally wouldn't have to file,</p> <p>4 would it?</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 THE WITNESS: I'm not a finance expert, I</p> <p>7 would be guessing.</p> <p>8 Q (BY MR. KILBORN:) So you don't even know</p> <p>9 whether or not HMMA or HMA is broke, do you?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: I do not.</p> <p>12 Q (BY MR. KILBORN:) Now, we know that</p> <p>13 Chairman Chung is not broke?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 Q (BY MR. KILBORN:) Or do we?</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 THE WITNESS: I do not know him personally.</p> <p>18 Q (BY MR. KILBORN:) Okay. In your personnel</p> <p>19 file, which --</p> <p>20 BY MR. KILBORN: Have we marked that? I</p> <p>21 don't think we have, her personnel file.</p> <p>22 Q (BY MR. KILBORN:) We'll mark your personnel</p> <p>23 file as Exhibit 8, Ms. Warner. Let me just show you</p> <p style="text-align: right;">120</p>

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<p>1 that.</p> <p>2 Is that your personnel file?</p> <p>3</p> <p>4 (Whereupon, Plaintiff's Exhibit 8 was marked</p> <p>5 for identification and copy of same is</p> <p>6 attached hereto.)</p> <p>7</p> <p>8 THE WITNESS: I don't think I've ever looked</p> <p>9 at it, but let's see here.</p> <p>10 It looks like the letter I sent, yes.</p> <p>11 BY MR. SCOFIELD: So I'm keeping track, 7 was</p> <p>12 the documents produced today?</p> <p>13 BY MR. SPORT: Yes, sir, that's correct.</p> <p>14 BY MR. KILBORN: Plus the pleadings that were</p> <p>15 attached to it.</p> <p>16 BY MR. SCOFIELD: Right.</p> <p>17 THE WITNESS: Yes, it all looks accurate.</p> <p>18 Q (BY MR. KILBORN:) Let me ask you a few</p> <p>19 questions. The first page, which has Bates Number 94,</p> <p>20 it looks like a letter to you regarding your</p> <p>21 employment, January 14th, 2003.</p> <p>22 A Yes.</p> <p>23 Q And it refers to Mr. I. B. Jang, J-A-N-G. Is</p> <p style="text-align: right;">121</p>	<p>1 A No.</p> <p>2 Q He had dual employment?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: He was not paid by HMMA. His</p> <p>5 duties here was that, but he was an employee of HMC.</p> <p>6 Q (BY MR. KILBORN:) So he was an employee of</p> <p>7 HMC, but he held the title of manager of human</p> <p>8 resources and team relations with HMMA?</p> <p>9 A He was the HR coordinator, yes.</p> <p>10 Q Right. And this would be typical of how the</p> <p>11 other expats have a relationship?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: Correct.</p> <p>14 Q (BY MR. KILBORN:) And I notice that the</p> <p>15 address is 7515 it looks like Halcyon --</p> <p>16 A Halcyon.</p> <p>17 Q Halcyon Summit Drive. Was the current</p> <p>18 location just not in existence?</p> <p>19 A The plant was not here, it was dirt and pecan</p> <p>20 trees so we were in an office building.</p> <p>21 Q Then you moved from the office building to</p> <p>22 the plant?</p> <p>23 A Yes, uh-huh.</p> <p style="text-align: right;">123</p>
<p>1 he the gentleman who you dealt with?</p> <p>2 A He's the HR coordinator -- was, he has moved</p> <p>3 on, but he was the HR coordinator when I was hired.</p> <p>4 Q Okay. Does he still work for some Hyundai</p> <p>5 company?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: He does.</p> <p>8 Q (BY MR. KILBORN:) Which one?</p> <p>9 A Kia.</p> <p>10 Q Is he on loan to Kia?</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 THE WITNESS: He left HMC and was hired to</p> <p>13 Kia.</p> <p>14 Q (BY MR. KILBORN:) So at this time, in 2003</p> <p>15 when you got hired, he was an expat?</p> <p>16 A Yes.</p> <p>17 Q And he held the title of manager of human</p> <p>18 resources and team relations, Hyundai Motor</p> <p>19 Manufacturing Alabama, L.L.C.?</p> <p>20 A Yes.</p> <p>21 Q What title did he hold with HMC?</p> <p>22 A He was a manager.</p> <p>23 Q Was he a vice president?</p> <p style="text-align: right;">122</p>	<p>1 Q And if you'd turn to Bates Number 1 -- 00106,</p> <p>2 it's called grant of license and release of claim.</p> <p>3 A Okay.</p> <p>4 Q And it looks like you signed that on December</p> <p>5 8th, 2003 or '5?</p> <p>6 A Five. It looks like 12-6-05.</p> <p>7 Q And then it looks like a similar document two</p> <p>8 pages over on 00108. Do you know why there are two of</p> <p>9 them, one's dated December and one's dated October '05?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: I don't know, unless maybe it</p> <p>12 was misplaced, but I'd be guessing. I don't know.</p> <p>13 Q (BY MR. KILBORN:) And I believe that each</p> <p>14 team member has to sign such a document?</p> <p>15 A Yes.</p> <p>16 Q In laymen's terms, what is that?</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 THE WITNESS: Basically, it's information</p> <p>19 that if we are in any type of commercials or film or</p> <p>20 photos or videos we would not receive additional</p> <p>21 compensation for that.</p> <p>22 Q (BY MR. KILBORN:) And all team members are</p> <p>23 required to sign that?</p> <p style="text-align: right;">124</p>

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<p>1 A Yes.</p> <p>2 Q How about expats?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: I don't know.</p> <p>5 Q (BY MR. KILBORN:) And in that document, it</p> <p>6 says in the second sentence: I fully understand and</p> <p>7 agree that such photographs, films or videotapes may be</p> <p>8 freely used for public display in any form of media for</p> <p>9 the purpose of furthering the business interest of</p> <p>10 Hyundai Motor Manufacturing Alabama, L.L.C., Hyundai</p> <p>11 Motor America, Inc. and/or Hyundai Motor Company</p> <p>12 through advertising, publicity, trade or any lawful</p> <p>13 purpose whatsoever.</p> <p>14 Are those words that you assisted in</p> <p>15 drafting?</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 THE WITNESS: No.</p> <p>18 Q (BY MR. KILBORN:) Do you know who drafted</p> <p>19 this?</p> <p>20 A I do not.</p> <p>21 Q When you signed it, did you fully understand</p> <p>22 what you were signing?</p> <p>23 A Yes.</p> <p style="text-align: right;">125</p>	<p>1 respective subsidiaries and affiliate companies,</p> <p>2 associate agencies, successors and assigns into each</p> <p>3 other person as they may designate from time to time</p> <p>4 collectively the, quote, company, closed quote, an</p> <p>5 unconditional royalty from royalty free license giving</p> <p>6 them the absolute right and permission to use my name</p> <p>7 And then it goes on to describe various things.</p> <p>8 Again, are the three companies, HMC, HMA and</p> <p>9 HMMA, referred to in this document collectively as the</p> <p>10 company because of the common business purpose --</p> <p>11 A Of advertising, commercials.</p> <p>12 Q -- of advertising; is that correct?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: Yes.</p> <p>15 Q (BY MR. KILBORN:) And it refers not only to</p> <p>16 those three named companies, but it refers to their</p> <p>17 respective subsidiaries and affiliated companies. What</p> <p>18 would be the respective subsidiaries?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: I do not know.</p> <p>21 Q (BY MR. KILBORN:) And what would be the</p> <p>22 respective affiliated companies?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">127</p>
<p>1 Q And did you know what the business interest</p> <p>2 of Hyundai Motor Manufacturing Alabama, Hyundai Motor</p> <p>3 America and/or Hyundai Motor Company were?</p> <p>4 BY MR. SCOFIELD: Objection to the form.</p> <p>5 THE WITNESS: In terms of requesting this</p> <p>6 information, yes.</p> <p>7 Q (BY MR. KILBORN:) And what were their</p> <p>8 business interests?</p> <p>9 BY MR. SCOFIELD: Same objection.</p> <p>10 THE WITNESS: Advertising, commercials, that</p> <p>11 the HMA and HMC were on-site to take pictures for</p> <p>12 commercials.</p> <p>13 Q (BY MR. KILBORN:) And that would be a common</p> <p>14 business interest among the three?</p> <p>15 A Yes, that's correct.</p> <p>16 Q And that's why all three are referred to in</p> <p>17 one document?</p> <p>18 BY MR. SCOFIELD: Object to the form.</p> <p>19 THE WITNESS: That's right.</p> <p>20 Q (BY MR. KILBORN:) And then the next</p> <p>21 paragraph says: By signing below, I hereby grant to</p> <p>22 Hyundai Motor Manufacturing Alabama, L.L.C., Hyundai</p> <p>23 Motor America, Inc. and Hyundai Motor Company and their</p> <p style="text-align: right;">126</p>	<p>1 THE WITNESS: I do not know.</p> <p>2 Q (BY MR. KILBORN:) What would be the</p> <p>3 respective associated agencies?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: I don't know.</p> <p>6 Q (BY MR. KILBORN:) How would you be expected</p> <p>7 to know what you were signing if you didn't know that?</p> <p>8 A As I said, the purpose of this was for</p> <p>9 filming advertisements and they were on-site for the</p> <p>10 grand opening as well as ads that were going to be</p> <p>11 produced.</p> <p>12 Q Can you name me any subsidiary of any of</p> <p>13 those three companies?</p> <p>14 A No.</p> <p>15 Q Can you name me any affiliated company with</p> <p>16 any of those three companies?</p> <p>17 A No.</p> <p>18 Q Can you name any associated agency with any</p> <p>19 of those companies?</p> <p>20 BY MR. SCOFIELD: Object to the form.</p> <p>21 THE WITNESS: No.</p> <p>22 Q (BY MR. KILBORN:) In other documents, have</p> <p>23 you seen where the three companies, HMC, HMA and HMMA,</p> <p style="text-align: right;">128</p>

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<p>1 have been referred to collectively as the company?</p> <p>2 BY MR. SCOFIELD: Object to the form.</p> <p>3 THE WITNESS: I don't recall.</p> <p>4 Q (BY MR. KILBORN:) And turning to the</p> <p>5 declaration of Wendy Warner, Plaintiff's Exhibit 6 that</p> <p>6 we marked earlier, were you aware that this declaration</p> <p>7 was going to be filed in this case?</p> <p>8 A Yes.</p> <p>9 Q And were you aware that the declaration was</p> <p>10 going to be filed to support a motion to dismiss?</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 THE WITNESS: No.</p> <p>13 Q (BY MR. KILBORN:) Did you know why it was</p> <p>14 going to be filed?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: No.</p> <p>17 Q (BY MR. KILBORN:) Were you given a draft of</p> <p>18 it and made changes to the draft or were you simply</p> <p>19 given the original declaration and you signed it as is?</p> <p>20 BY MR. SCOFIELD: Object to the form.</p> <p>21 THE WITNESS: As is, the original</p> <p>22 declaration.</p> <p>23 Q (BY MR. KILBORN:) So you weren't given a</p> <p style="text-align: right;">129</p>	<p>1 So in the chain of command, as far as you're</p> <p>2 concerned, you're third in line?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: In human resources.</p> <p>5 Q (BY MR. KILBORN:) Right, human resources.</p> <p>6 And in the declaration, you state in</p> <p>7 paragraph two: As manager of HMMA's employment</p> <p>8 department, I have access to and regularly utilize the</p> <p>9 personnel records of individuals employed by HMMA.</p> <p>10 Is that correct?</p> <p>11 A Yes.</p> <p>12 Q The next sentence says: I also have personal</p> <p>13 knowledge regarding HMMA's operations as well as its</p> <p>14 relationship to Hyundai Motor America, Inc.</p> <p>15 Now, you state in there that you have</p> <p>16 personal knowledge; is that a true statement?</p> <p>17 A Yes.</p> <p>18 Q All right. And tell me of your own personal</p> <p>19 knowledge what you know about the relationship between</p> <p>20 HMMA and Hyundai Motor America, Inc.</p> <p>21 A At HMMA, we build vehicles, two of them, a</p> <p>22 Sonata, which is a sedan, and a small sports utility</p> <p>23 vehicle called the Santa Fe. At HMA, they sell the</p> <p style="text-align: right;">131</p>
<p>1 draft ahead of time and made corrections or asked to</p> <p>2 comment?</p> <p>3 A No.</p> <p>4 Q You just were handed the declaration and you</p> <p>5 signed it?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: I was given the declaration and</p> <p>8 told to review it and when -- if I had questions and I</p> <p>9 was given time to review it and then I returned it to</p> <p>10 legal.</p> <p>11 Q (BY MR. KILBORN:) Why didn't you write it</p> <p>12 yourself?</p> <p>13 A I'm not a lawyer.</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 Q (BY MR. KILBORN:) In the chain of command, I</p> <p>16 think you said that you reported to Mr. Ryu?</p> <p>17 A Correct.</p> <p>18 Q And he is the vice president for human</p> <p>19 resources and administration?</p> <p>20 A Yes.</p> <p>21 Q Do you know who his immediate superior is?</p> <p>22 A He reports to President Ahn.</p> <p>23 Q President Ahn, okay.</p> <p style="text-align: right;">130</p>	<p>1 vehicles and distribute them to various dealerships.</p> <p>2 Q Is that the extent of your knowledge?</p> <p>3 A Yes.</p> <p>4 Q You don't know the legal relationship?</p> <p>5 A I do not.</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 Q (BY MR. KILBORN:) You don't know the</p> <p>8 financial relationship?</p> <p>9 A No, sir.</p> <p>10 Q You don't know the accounting relationship?</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 THE WITNESS: No, sir.</p> <p>13 Q (BY MR. KILBORN:) You don't know the</p> <p>14 intercompany personnel relationships insofar as whether</p> <p>15 or not they have common executives, officers, directors</p> <p>16 or members?</p> <p>17 A No.</p> <p>18 BY MR. SCOFIELD: Object to the form.</p> <p>19 Q (BY MR. KILBORN:) And you don't know the</p> <p>20 financial relationship insofar as you don't know if any</p> <p>21 money is exchanged in any form between either company?</p> <p>22 A No.</p> <p>23 Q And you don't know if any money is exchanged</p> <p style="text-align: right;">132</p>

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<p>1 between either company?</p> <p>2 A No.</p> <p>3 Q And what you know about HMA is that you</p> <p>4 visited, I think you said, there on your human</p> <p>5 resources?</p> <p>6 A Benchmarking.</p> <p>7 Q Benchmarking.</p> <p>8 Do you know whether or not they share, for</p> <p>9 instance, journals?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: I don't understand the</p> <p>12 question.</p> <p>13 Q (BY MR. KILBORN:) Well, do you know anything</p> <p>14 about bookkeeping?</p> <p>15 A No.</p> <p>16 Q Do you do your own personal bookkeeping?</p> <p>17 A A balance a checkbook.</p> <p>18 Q Do you know who maintains the books and</p> <p>19 records and the finances of either company?</p> <p>20 A No.</p> <p>21 Q Do you know whether they have any common</p> <p>22 employees?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">133</p>	<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 THE WITNESS: No.</p> <p>3 Q (BY MR. KILBORN:) Do you know who the</p> <p>4 outside auditors are of HMA?</p> <p>5 A I do know that KPMG is our financial</p> <p>6 auditors.</p> <p>7 Q When you say our, who do you mean?</p> <p>8 A HMMA.</p> <p>9 Q How about HMA?</p> <p>10 A I don't know.</p> <p>11 Q Okay. Would you say that it's fair to say</p> <p>12 that your personal knowledge on what you call in your</p> <p>13 declaration the relationship between HMMA and Hyunda</p> <p>14 Motor America is very limited?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: You need to be more specific.</p> <p>17 I'm not clear.</p> <p>18 Q (BY MR. KILBORN:) Well, you told me what you</p> <p>19 know about the relationship.</p> <p>20 A Yes.</p> <p>21 Q And then you've told me what you don't know</p> <p>22 about the relationship. Would you agree with me that</p> <p>23 what you do know that you told me about is a very</p> <p style="text-align: right;">135</p>
<p>1 THE WITNESS: I am not aware that they have</p> <p>2 any common employees. And based on the position that I</p> <p>3 hold, I would have that information.</p> <p>4 Q (BY MR. KILBORN:) Okay. Do you know whether</p> <p>5 or not they have any common officers?</p> <p>6 A I do not.</p> <p>7 Q Do you know Chairman Chung's relationship to</p> <p>8 either company?</p> <p>9 A No.</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 Q (BY MR. KILBORN:) Do you know Chairman</p> <p>12 Chung, Jr.'s relationship to either company?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: No.</p> <p>15 Q (BY MR. KILBORN:) I may have asked you this</p> <p>16 and I apologize if I did: Do you know if they have</p> <p>17 any -- joint or common financial or accounting</p> <p>18 relationships?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: I don't know.</p> <p>21 Q (BY MR. KILBORN:) Do you know whether or not</p> <p>22 either HMA or HMMA filed state or federal income tax</p> <p>23 returns?</p> <p style="text-align: right;">134</p>	<p>1 limited knowledge in an overall relationship between</p> <p>2 companies?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: In the scope of my</p> <p>5 responsibility, I know what I need to know within my</p> <p>6 position.</p> <p>7 Q (BY MR. KILBORN:) So your knowledge is</p> <p>8 limited to the human resources subject matter?</p> <p>9 A That would be correct.</p> <p>10 Q And other subject matters, everything from</p> <p>11 legal to financial, you don't know as you've told me?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: That's correct.</p> <p>14 Q (BY MR. KILBORN:) Why wasn't that limitation</p> <p>15 on your personal knowledge stated in your declaration?</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 THE WITNESS: I don't have an answer for you</p> <p>18 there.</p> <p>19 Q (BY MR. KILBORN:) That sentence should read</p> <p>20 that you have knowledge of the human resources</p> <p>21 relationship, shouldn't it?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: I don't know, it's not -- I did</p> <p style="text-align: right;">136</p>

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1 not create this document. I interpreted that to be
 2 within the scope of my responsibility.
 3 **Q (BY MR. KILBORN:)** That was your reading, but
 4 it's not stated here?
 5 A That was my understanding when I read it.
 6 **Q That's what you were told?**
 7 BY MR. SCOFIELD: Object to the form.
 8 THE WITNESS: It was my understanding when I
 9 read it.
 10 **Q (BY MR. KILBORN:)** Right. And do you agree
 11 that the relationship between HMMA and HMA could
 12 encompass a lot of other areas, other than human
 13 resources, as we've talked about?
 14 BY MR. SCOFIELD: Object to the form.
 15 THE WITNESS: I don't know that for a fact.
 16 I would be guessing.
 17 **Q (BY MR. KILBORN:)** So you just don't know,
 18 period?
 19 A That would be correct.
 20 **Q So outside of human resources, they could**
 21 **have a very tight relationship or no relationship at**
 22 **all?**
 23 BY MR. SCOFIELD: Object to the form.

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1 THE WITNESS: I don't understand your
 2 question, I'm sorry.
 3 **Q (BY MR. KILBORN:)** Well, did you see
 4 relationships with various Toyota affiliates?
 5 A Suppliers, yes.
 6 **Q Any other ones?**
 7 A Not that I recall.
 8 **Q In paragraph three of your declaration, it**
 9 **says: HMMA is organized in the State of Delaware as a**
 10 **limited liability company and has its principal place**
 11 **of business in Montgomery, Alabama.**
 12 Is that information that you base on Exhibit
 13 7, Bates Number 0001?
 14 A Yes.
 15 BY MR. SCOFIELD: I'm just going to allow her
 16 to confirm that.
 17 THE WITNESS: Thank you.
 18 Yes.
 19 **Q (BY MR. KILBORN:)** And you told me that you
 20 don't know what a limited liability company is,
 21 correct?
 22 A As I said, it's a partnership, a corporate
 23 partnership, but to say that I'm an expert on that, no.

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1 THE WITNESS: That would be speculation on my
 2 part.
 3 **Q (BY MR. KILBORN:)** But it could be anywhere
 4 in between, a tight or no relationship outside of human
 5 resources?
 6 BY MR. SCOFIELD: Same objection.
 7 THE WITNESS: Again, based on the scope of my
 8 responsibility, I do know that there is no relationship
 9 between HMA and HMMA from an employee perspective.
 10 **Q (BY MR. KILBORN:)** And you mean human
 11 resources?
 12 A That would be correct.
 13 **Q And you acknowledge that there are many other**
 14 **types of relationships that companies can have?**
 15 A Based on what you've discussed.
 16 **Q Well, you've seen that from the different**
 17 **companies that you've worked for, haven't you?**
 18 BY MR. SCOFIELD: Object to the form.
 19 THE WITNESS: That would be speculation on my
 20 part.
 21 **Q (BY MR. KILBORN:)** Well, you saw that at
 22 Toyota, didn't you?
 23 BY MR. SCOFIELD: Object to the form.

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1 **Q Who is it a partnership with?**
 2 BY MR. SCOFIELD: Object to the form.
 3 THE WITNESS: Again, it's a corporate
 4 partnership, that's all I know.
 5 **Q (BY MR. KILBORN:)** Do you know that a
 6 partnership requires two partners?
 7 A I don't.
 8 **Q You can't be a partner with yourself, can**
 9 **you?**
 10 A I'd be speculating.
 11 **Q All right. Well, let's just take a marriage.**
 12 **You've got two spouses who are marriage partners.**
 13 **Wouldn't the partnership as you use the word mean or**
 14 **imply two entities?**
 15 BY MR. SCOFIELD: Object to the form.
 16 THE WITNESS: Again, it would be speculation
 17 on my part.
 18 **Q (BY MR. KILBORN:)** Well, you used the term.
 19 What did you mean by it?
 20 A The partnership?
 21 BY MR. SCOFIELD: Object to the form.
 22 THE WITNESS: It's a corporate structure.
 23 **Q (BY MR. KILBORN:)** Well, who are the partners

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35 (Pages 137 to 140)

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<p>1 in the partnership?</p> <p>2 A I don't know.</p> <p>3 Q And what is the corporate structure?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: I don't know.</p> <p>6 Q (BY MR. KILBORN:) You don't even know if</p> <p>7 there is a corporate structure, do you?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: I don't.</p> <p>10 Q (BY MR. KILBORN:) As a matter of fact, you</p> <p>11 don't know what a corporate structure is, do you?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: I do not.</p> <p>14 Q (BY MR. KILBORN:) The -- Bates Number 0001,</p> <p>15 corporate details, Office of the Secretary of State,</p> <p>16 State of Alabama, it looks like it's got a print date</p> <p>17 of November 13, 2007. Can you explain to me how you</p> <p>18 saw that before your declaration which is dated May</p> <p>19 2nd, 2007 and yet it was printed yesterday?</p> <p>20 BY MR. SCOFIELD: Vince, that was printed by</p> <p>21 me as counsel.</p> <p>22 THE WITNESS: I do recall seeing it, but I</p> <p>23 don't recall the particular date that it was shared</p> <p style="text-align: right;">141</p>	<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 Q (BY MR. KILBORN:) Was it shredded?</p> <p>3 A I would be speculating. I don't know.</p> <p>4 Q Do you have a copy of your declaration?</p> <p>5 A No.</p> <p>6 Q So you signed it, then it was taken away and</p> <p>7 you didn't even retain a copy; is that correct?</p> <p>8 A That's correct.</p> <p>9 Q And you didn't retain what you looked at?</p> <p>10 A That's correct.</p> <p>11 Q Where is that thing that goes on top of here?</p> <p>12 A Is this it?</p> <p>13 Q Oh, you've got it.</p> <p>14 The same question with regard to Bates Number</p> <p>15 0002, that's the -- is that the web site?</p> <p>16 A Yes.</p> <p>17 Q And that was also printed actually today,</p> <p>18 wasn't it, November 14th, 2007?</p> <p>19 BY MR. SPORT: Today is the 15th.</p> <p>20 BY MR. SCOFIELD: Again, Vince, I'll</p> <p>21 stipulate that I'm the one that prepared and filed</p> <p>22 those documents responsive to the duces tecum request.</p> <p>23 Q (BY MR. KILBORN:) Today is the 15th of</p> <p style="text-align: right;">143</p>
<p>1 with me. I do know that Chad Griffon when he asked me</p> <p>2 to sign that he shared both of those with me.</p> <p>3 Q (BY MR. KILBORN:) Well, the document that</p> <p>4 I'm looking at here that was given to me this morning,</p> <p>5 Bates Number 0001, we know that you didn't look at that</p> <p>6 piece of paper before your declaration, don't we?</p> <p>7 A Not that particular one, but this document,</p> <p>8 yes.</p> <p>9 Q All right. Well, where is the document that</p> <p>10 you looked at?</p> <p>11 A I can't answer that for you. I don't know.</p> <p>12 Q Was it taken back after you looked at?</p> <p>13 A Yes, uh-huh, the document that I signed as</p> <p>14 well as those pieces of paper.</p> <p>15 Q And are you telling us under oath that the</p> <p>16 two are identical?</p> <p>17 A Yes.</p> <p>18 Q You remember what you saw then?</p> <p>19 A I do.</p> <p>20 Q Do you know why the document itself was not</p> <p>21 produced?</p> <p>22 A I don't.</p> <p>23 Q Well, somebody has it, don't they?</p> <p style="text-align: right;">142</p>	<p>1 November?</p> <p>2 A Yes.</p> <p>3 Q Okay. That was printed yesterday, wasn't it?</p> <p>4 A I don't know if it was printed or not</p> <p>5 yesterday.</p> <p>6 Q Well, what day does it say that it was</p> <p>7 printed?</p> <p>8 A November 14th.</p> <p>9 Q Yesterday.</p> <p>10 So this piece of paper is not the one that</p> <p>11 you looked at?</p> <p>12 A And I never looked at this in terms of</p> <p>13 signing the declaration, just the Delaware</p> <p>14 incorporation pages.</p> <p>15 Q So the only piece of paper that you looked at</p> <p>16 was Bates Number 2?</p> <p>17 A And then the other one for HMA.</p> <p>18 Q Excuse me, 1. That's the Secretary of State</p> <p>19 document.</p> <p>20 A There's two of those, one for HMMA and one</p> <p>21 for HMA.</p> <p>22 BY MR. SCOFIELD: Keep on going.</p> <p>23 THE WITNESS: Keep going.</p> <p style="text-align: right;">144</p>

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<p>1 Q (BY MR. KILBORN:) I apologize. There's a --</p> <p>2 Bates Number 4 is for the company Hyundai Motor</p> <p>3 America, Inc. and that was printed on the same date,</p> <p>4 November 13th, 2007?</p> <p>5 A But I had been shown those when I signed that</p> <p>6 declaration by Chad Griffon.</p> <p>7 Q You anticipated my question.</p> <p>8 Is it true that this document that I'm</p> <p>9 looking at was printed two days ago?</p> <p>10 A I did not print it.</p> <p>11 BY MR. SCOFIELD: We'll stipulate that it was</p> <p>12 printed two days ago by counsel.</p> <p>13 Q (BY MR. KILBORN:) I just want you to say</p> <p>14 whether it was or not.</p> <p>15 A I did not print it.</p> <p>16 Q So you don't know?</p> <p>17 A That looks normal. When you do print, the</p> <p>18 date is on there, but I did not print it so I can't</p> <p>19 tell you that.</p> <p>20 Q Okay. So your knowledge when you signed the</p> <p>21 declaration, Plaintiff's Exhibit 6, about the -- what</p> <p>22 you state is a relationship between HMMA and HMA, as</p> <p>23 far as the -- any of the corporate structure is based</p> <p style="text-align: right;">145</p>	<p>1 corporations file documents with Secretaries of State?</p> <p>2 A To -- I honestly don't know. I'd be</p> <p>3 guessing.</p> <p>4 Q Does HMA do any business whatsoever in the</p> <p>5 State of Alabama?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: I don't work for HMA, so I</p> <p>8 don't know.</p> <p>9 Q (BY MR. KILBORN:) So as far as your personal</p> <p>10 knowledge is concerned, it could do a lot of business</p> <p>11 in Alabama or none?</p> <p>12 A At HMMA is the scope of my responsibility.</p> <p>13 Q Well, you do in your declaration talk about</p> <p>14 HMA, don't you?</p> <p>15 A In terms of my basic knowledge of the</p> <p>16 operations, yes.</p> <p>17 Q But other than what -- Other than what's on</p> <p>18 Bates Number 0004, you don't know anything about HMA,</p> <p>19 do you?</p> <p>20 BY MR. SCOFIELD: Object to the form.</p> <p>21 THE WITNESS: No, huh-uh.</p> <p>22 Q (BY MR. KILBORN:) Does -- You don't even</p> <p>23 know if HMA files any type of annual reports with the</p> <p style="text-align: right;">147</p>
<p>1 on what you looked at, Bates Numbers 2 and 4 in Exhibit</p> <p>2 6?</p> <p>3 A Yes.</p> <p>4 Q So anybody could have printed that off?</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 THE WITNESS: I don't understand the</p> <p>7 question.</p> <p>8 Q (BY MR. KILBORN:) Well, it was public</p> <p>9 information, or was it?</p> <p>10 A My understanding was it was public</p> <p>11 information, yes.</p> <p>12 Q Okay. Did you see the -- Strike that.</p> <p>13 Did you see any of the corporate documents</p> <p>14 that were filed with the Secretary of State?</p> <p>15 A No.</p> <p>16 Q Why is it that -- Why is it that HMA, Hyundai</p> <p>17 Motor America, Inc., on Bates Number 0004 -- Strike</p> <p>18 that.</p> <p>19 Why is it that HMA has filed corporate</p> <p>20 information with the Alabama Secretary of State?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: I don't know.</p> <p>23 Q (BY MR. KILBORN:) Do you know why</p> <p style="text-align: right;">146</p>	<p>1 Alabama Secretary of State, do you?</p> <p>2 A No.</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 Q (BY MR. KILBORN:) Do you know if HMMA does</p> <p>5 A I do not.</p> <p>6 Q Do you know if HMC does?</p> <p>7 A I don't.</p> <p>8 Q Do you know if HMC does business in Alabama?</p> <p>9 A I do not.</p> <p>10 Q Do you know if it's qualified to do business</p> <p>11 in Alabama?</p> <p>12 A No.</p> <p>13 Q Do you know if HMMA has qualified to do</p> <p>14 business in Alabama?</p> <p>15 A Based on that information that was shared</p> <p>16 with me.</p> <p>17 Q Well, that doesn't say whether they're</p> <p>18 qualified to do business or not, does it?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: Again, I'm in human resources.</p> <p>21 Q (BY MR. KILBORN:) And you don't know whether</p> <p>22 HMA is qualified to do business in Alabama, do you?</p> <p>23 A No.</p> <p style="text-align: right;">148</p>

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<p>1 Q On Bates Number 0004, it says: Registered 2 agent, National Registered Agents, Inc., 150 South 3 Perry Street, Montgomery, Alabama. 4 Do you know what that means? 5 BY MR. SCOFIELD: Object to the form. 6 THE WITNESS: No. 7 Q (BY MR. KILBORN:) What is located at that 8 address? 9 A I don't know. 10 Q We're on South Perry right now, aren't we? 11 A Yeah. 12 Q And so as a registered agent of this company, 13 HMA is right down the street here, isn't it? 14 A I'd be speculating. 15 Q Have you ever been there? 16 A No, sir. 17 Q Do you know what is there? 18 A No, sir. 19 Q I see where Hyundai Motor Manufacturing 20 Alabama has a registered agent called Neal -- 21 Richard E. Neal, 700 Hyundai Boulevard, Montgomery, 22 Alabama 36105. You do know who he is? 23 A Yes.</p> <p style="text-align: right;">149</p>	<p>1 Q Do they have any type of office in Colorado? 2 A I don't know. 3 Q Do they have any type of office or location 4 in any other place within California? 5 A HMA? 6 Q Right. 7 A I don't know. 8 Q Do they have an office in any other country, 9 other than the United States? 10 BY MR. SCOFIELD: Object to the form. 11 THE WITNESS: It would be speculation on my 12 part. 13 Q (BY MR. KILBORN:) Don't know? 14 A No, sir. 15 Q And your affidavit -- excuse me, your 16 declaration, Exhibit 6, item five -- paragraph five 17 says: HMMA is an independent manufacturing operation 18 of Hyundai Motor Company based in Seoul, Korea. 19 What is meant by the word independent? 20 A You want the definition of independent? 21 Q I want to know what you meant in your 22 declaration by that word. 23 A HMMA is an independent manufacturing</p> <p style="text-align: right;">151</p>
<p>1 Q Who is he? 2 A He's our vice president for legal. 3 Q Okay. And how long has he been there? 4 A He was hired before me, I believe, September 5 of '02. 6 Q Is he a team member? 7 A He is. 8 Q Excuse me? 9 A Yes. 10 Q Why does HMMA's registered agent have a 11 different name and address than HMA? 12 BY MR. SCOFIELD: Object to the form. 13 You can answer if you know. 14 THE WITNESS: Because their main office is in 15 California and our production of vehicles is in 16 Alabama. 17 Q (BY MR. KILBORN:) Well, name me every other 18 location HMA has an office of any type. 19 BY MR. SCOFIELD: Object to the form. 20 THE WITNESS: I could not. 21 Q (BY MR. KILBORN:) Do they have any type of 22 office in New Jersey? 23 A I don't know.</p> <p style="text-align: right;">150</p>	<p>1 operation of Hyundai Motor Company based in Seoul, 2 Korea. Hyundai Motor Manufacturing Alabama is a 3 manufacturing company that reports to Hyundai Motor 4 Company in Seoul, Korea. 5 Q My question was: What did you mean by the 6 word independent? 7 A Independent means unique, independent means 8 solely, but that would be, you know, my definition of 9 what independent means. 10 Q What factors do you consider and what 11 training do you base it upon to determine if one 12 corporation is independent of another? 13 A I'm sorry, I don't understand your question. 14 Q What factors have you used in your own mind 15 to conclude that one company, HMMA, is independent of 16 another company, HMC? 17 BY MR. SCOFIELD: Object to the form. 18 THE WITNESS: Could you be more specific? 19 Q (BY MR. KILBORN:) Yeah. Rather than using 20 the adjective independent, what do you -- what facts do 21 you have to support that? 22 A I'm sorry, I don't understand your question. 23 Q Okay. Well, you used the word independent.</p> <p style="text-align: right;">152</p>

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<p>1 A I did not use the word independent, I 2 reviewed it and read it and agreed that that was the 3 information that I was aware of in the scope of my 4 responsibility as a human resource manager for HMMA. 5 Q So independent as contained in paragraph five 6 was not your word? 7 A I did not write this, no. I agreed that the 8 information was correct. 9 Q I got that. You agree? 10 A Yes. 11 Q But that independent is not your word? 12 A I did not write this, no. 13 Q Okay. Well, what in your mind did you use to 14 agree to the word independent? 15 BY MR. SCOFIELD: Object to the form. 16 THE WITNESS: As I said, solely, unique. 17 Independent means separate. Independent means solely, 18 separate, unique. 19 Q (BY MR. KILBORN:) Those are all adjectives. 20 What facts as far as a relationship between the two 21 companies do you know of that would support that 22 adjective independent? 23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">153</p>	<p>1 team relations and all managers attended the off-site. 2 Q And you don't know based on spirit training 3 or anything else that you have personal knowledge of 4 whether or not HMA and -- excuse me, HMMA or HMC are 5 legally, financially independent at all, do you? 6 A No. 7 BY MR. SCOFIELD: Object to the form. 8 Q (BY MR. KILBORN:) As far as you know, 9 Chairman Chung could completely own and control both 10 companies, couldn't he? 11 BY MR. SCOFIELD: Object to the form. 12 THE WITNESS: It would be speculation on my 13 part. 14 Q (BY MR. KILBORN:) But as far as you know, 15 you don't know? 16 A I don't know one way or the other. 17 Q All right. And have you heard the phrase top 18 down operating style? 19 BY MR. SCOFIELD: Object to the form. 20 THE WITNESS: Yes. 21 Q (BY MR. KILBORN:) Did you hear it in 22 relation to Hyundai? 23 A No.</p> <p style="text-align: right;">155</p>
<p>1 THE WITNESS: My tenure with the company 2 having been there since startup. 3 Q (BY MR. KILBORN:) Which company? 4 A HMMA. Having visited HMC, training that was 5 received in terms of explanation of HMC and HMMA and 6 HMA. 7 Q And when's the last time that you got that 8 explanation? 9 BY MR. SCOFIELD: Object to the form. 10 THE WITNESS: Spirit training. We had a 11 managers forum probably -- 12 Q (BY MR. KILBORN:) Who is we? 13 A -- thirty days ago. 14 HMMA managers. 15 Q Spirit training? 16 A Uh-huh. 17 Q And that was within HMMA? 18 A Yes, sir. 19 Q And who conducted that? 20 A Our team relations department. 21 Q That would be who? 22 A That would be Auddie Swagman who is our team 23 relations manager and one of our assistant managers in</p> <p style="text-align: right;">154</p>	<p>1 Q Do you know what it means? 2 A Top down means a hierarchical type of 3 environment that would be -- the terms of structure 4 would be a vertical structure versus a horizontal 5 structure. 6 Q Is there a vertical structure? 7 A It is hierarchical, yes, and it is top down. 8 Q It, you mean Hyundai? 9 A HMMA. 10 Q HMMA? 11 A Yeah. I can only speak for HMMA. 12 Q How about HMC? 13 A I don't know that, I've never worked for HMC. 14 I've never been in their environment. 15 Q Well, you did learn the culture, didn't you? 16 A Yes. 17 Q You took three weeks in Seoul to do that? 18 A It was more of a cultural and it was more of 19 a touring and more traveling, it wasn't really 20 organizational training. 21 Q It was just a vacation? 22 A It wasn't a vacation. 23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">156</p>

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<p>1 THE WITNESS: It certainly was not 2 instructional of HMC, it was more exposure to the 3 culture and to the environment and to visually see the 4 locations but not structured training. Again, with the 5 language barrier, that's somewhat difficult for 6 exchange of information.</p> <p>7 Q (BY MR. KILBORN:) Did you tell me that you 8 did know who the president and CEO of HMA is?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: I don't.</p> <p>11 Q (BY MR. KILBORN:) If I remember correctly, 12 you said that you didn't know any of the officers or 13 directors or employees or anybody?</p> <p>14 A I said Keith Duckworth.</p> <p>15 Q That's the only one?</p> <p>16 A And I know the vice president for human 17 resources.</p> <p>18 Q And his name is?</p> <p>19 A Kathy Parker.</p> <p>20 Q Kathy?</p> <p>21 A Parker.</p> <p>22 Q How many vice presidents does HMA have?</p> <p>23 A I don't know.</p> <p style="text-align: right;">157</p>	<p>1 talked about, Bates Number 4, that's the one that 2 refers to HMA. I'll hand that to you.</p> <p>3 Is that where you got the information that 4 you put in paragraph seven?</p> <p>5 A That and my visit to California for 6 benchmarking.</p> <p>7 Q And you say in there that HMA's principal 8 place of business is in Fountain Valley, California?</p> <p>9 A Yes.</p> <p>10 Q Do you know what principal place of business 11 mean?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: Principal place of business 14 means it's the primary place of where they conduct 15 business.</p> <p>16 Q (BY MR. KILBORN:) Does HMA conduct any 17 business in South Korea?</p> <p>18 BY MR. SCOFIELD: Object to the form.</p> <p>19 THE WITNESS: I don't know.</p> <p>20 Q (BY MR. KILBORN:) Does it conduct any 21 business in any other country?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: I don't know.</p> <p style="text-align: right;">159</p>
<p>1 Q Do they have any other than Ms. Parker?</p> <p>2 BY MR. SCOFIELD: Object to the form.</p> <p>3 THE WITNESS: It would be speculation on my 4 part. I'd be guessing.</p> <p>5 Q (BY MR. KILBORN:) And in your declaration, 6 Exhibit 6, paragraph seven, you say: It is my 7 understanding that Hyundai Motor America, Inc., HMA, 8 was organized as a corporation in the State of 9 California and has its principal place of business in 10 Fountain Valley, California. Is that based on 11 Exhibit --</p> <p>12 Let me put that together with this, excuse 13 me.</p> <p>14 BY MR. SCOFIELD: Just for housekeeping, I 15 think the top of the exhibit which contains the 16 documents is going to be the objections and responses 17 to the document request, not Wendy Warner's 18 declaration.</p> <p>19</p> <p>20 (Whereupon, a discussion was held off the 21 record.)</p> <p>22</p> <p>23 Q (BY MR. KILBORN:) And Exhibit 7, which we've</p> <p style="text-align: right;">158</p>	<p>1 Q (BY MR. KILBORN:) How do you know that it 2 still exists?</p> <p>3 A My visit there was less than a year ago and I 4 recently met with the vice president and the national 5 sales manager at a meeting in Colorado last week.</p> <p>6 Q And what was the national sales manager's 7 title?</p> <p>8 A Compensation of benefits.</p> <p>9 Q Compensation of benefits?</p> <p>10 A Human resources.</p> <p>11 Q He's a human resources guy?</p> <p>12 A She.</p> <p>13 Q She, okay.</p> <p>14 Did you meet with other than human resources 15 people?</p> <p>16 A No, just human resources.</p> <p>17 Q In paragraph nine of your declaration, you 18 say: HMA and HMMA are legally distinct and separate 19 corporate entities.</p> <p>20 What background and qualifications do you 21 have to express what is a legally distinct and separate 22 corporate entity?</p> <p>23 A Again, I did not write this, my legal --</p> <p style="text-align: right;">160</p>

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<p>1 in-house legal counsel did. They are the subject 2 matter experts in those areas and they confirmed that 3 before I signed it.</p> <p>4 Q So that's their opinion? 5 BY MR. SCOFIELD: Object to the form. 6 THE WITNESS: That's correct.</p> <p>7 Q (BY MR. KILBORN:) You don't have the 8 qualifications to express an opinion, do you? 9 BY MR. SCOFIELD: Object to the form. 10 THE WITNESS: I guess that would be your 11 opinion, not mine.</p> <p>12 Q (BY MR. KILBORN:) Well, what are your 13 qualifications to express an opinion on what's legally 14 distinct and separate corporate entities? 15 A As I said in the scope of my position, the 16 bulk of the material in here pertains to human 17 resources issues and the subject matter expert in that 18 area affirmed that that information was correct before 19 I signed it.</p> <p>20 Q That's the legal counsel? 21 A That's correct.</p> <p>22 Q Well, this is your declaration. 23 A In consultation with my in-house counsel.</p> <p style="text-align: right;">161</p>	<p>1 felt that I did.</p> <p>2 Q (BY MR. KILBORN:) Your information was to 3 gather the best resources? 4 A That is one of my duties, yes, in terms of 5 being a manager of the company.</p> <p>6 Q Well, what best resources on the subject of 7 what is a legally distinct and separate corporate 8 entity -- 9 A My legal department.</p> <p>10 Q Well, why didn't your legal department sign 11 this? 12 BY MR. SCOFIELD: Object to the form. 13 THE WITNESS: Because the bulk of the 14 information has to do with human resources.</p> <p>15 Q (BY MR. KILBORN:) But nine does not at all, 16 does it? 17 BY MR. SCOFIELD: Object to the form. 18 THE WITNESS: It was discussed with me and it 19 was reviewed and I did confirm it.</p> <p>20 Q (BY MR. KILBORN:) What does nine have to do 21 with human resources? 22 BY MR. SCOFIELD: Object to the form. 23 THE WITNESS: Human resources is a function</p> <p style="text-align: right;">163</p>
<p>1 Q Well, where does that say that in this 2 declaration? 3 BY MR. SCOFIELD: Object to the form. 4 THE WITNESS: Again, this information was 5 drafted by in-house counsel, not myself.</p> <p>6 Q (BY MR. KILBORN:) Is this your declaration 7 or somebody else's? 8 A It's mine to confirm it, but I did not write 9 it, I did not draft it.</p> <p>10 Q Well, what qualifications do you, 11 Wendy Warner, have to confirm what is a legally 12 distinct corporation? 13 BY MR. SCOFIELD: Object to the form. 14 THE WITNESS: The legal department felt that 15 I was the best expert to do that and they requested 16 that I sign it.</p> <p>17 Q (BY MR. KILBORN:) That's not my question. 18 What qualifications do you, Wendy Warner, have to 19 express an opinion on what is a legally distinct and 20 separate corporate entity? 21 BY MR. SCOFIELD: Object to the form. 22 THE WITNESS: My information was to gather 23 the best resources, to confirm this information and I</p> <p style="text-align: right;">162</p>	<p>1 of the whole company. And certainly we're not experts 2 in all areas, but we do touch just about every piece of 3 information in the company throughout HMMA.</p> <p>4 Q (BY MR. KILBORN:) But you didn't say HMMA 5 and HMA are distinct and separate insofar as human 6 resources, did you? 7 BY MR. SCOFIELD: Object to the form. 8 THE WITNESS: In terms of my experience, in 9 terms of the scope of work, yes.</p> <p>10 Q (BY MR. KILBORN:) You didn't -- You 11 specifically used the word legally, didn't you? 12 A I did not write this. I did review it, I did 13 confirm with the information.</p> <p>14 Q Listen to my question: You specifically used 15 the word legally, didn't you? 16 A I did not.</p> <p>17 Q Well, your declaration specifically used that 18 word and you signed it, didn't you? 19 A I did sign it, yes.</p> <p>20 Q And then you went further and wrote in the 21 last sentence of your declaration these words: 22 Pursuant to 28 USC, Section 1746, I declare under 23 penalty of perjury that the foregoing information is</p> <p style="text-align: right;">164</p>

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<p>1 true and correct. You signed that, didn't you?</p> <p>2 A I did, yes.</p> <p>3 Q Are those your words?</p> <p>4 A Those are the words that were drafted by my</p> <p>5 legal counsel and I reviewed it thoroughly and, yes, as</p> <p>6 a manager of HMMA, in good faith, I did sign it.</p> <p>7 Q Well, are these your words?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: These are not my words that I</p> <p>10 wrote this. As I've told you at least ten times, I did</p> <p>11 not write this.</p> <p>12 Q (BY MR. KILBORN:) I understand that.</p> <p>13 A Uh-huh.</p> <p>14 Q But you're telling the court based on</p> <p>15 personal knowledge everything that you say in this</p> <p>16 declaration is true, aren't you?</p> <p>17 A That is correct, yes, sir.</p> <p>18 Q And you didn't have the personal knowledge to</p> <p>19 put this information in here, did you?</p> <p>20 BY MR. SCOFIELD: Object to the form.</p> <p>21 THE WITNESS: As I said, I did have the</p> <p>22 information from the experts that gathered it, I</p> <p>23 confirmed it and I did sign it based on good faith.</p> <p style="text-align: right;">165</p>	<p>1 Section 1746 before May 2nd, 2007, had you?</p> <p>2 BY MR. SCOFIELD: Object to the form.</p> <p>3 THE WITNESS: I'm not a lawyer and I don't</p> <p>4 profess to be a lawyer.</p> <p>5 Q (BY MR. KILBORN:) I know you're not a</p> <p>6 lawyer. We've established that.</p> <p>7 Had you ever heard of that before?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: No, sir.</p> <p>10 Q (BY MR. KILBORN:) Your understanding of</p> <p>11 personal knowledge includes what other people tell you</p> <p>12 like the lawyers?</p> <p>13 A I do have subject matter experts in a variety</p> <p>14 of areas. I'm not a financial expert, I'm not a legal</p> <p>15 expert, but in terms of representing the company in a</p> <p>16 variety of different roles, yes.</p> <p>17 Q My question is: In your use of the word my</p> <p>18 personal knowledge, do you include what other people</p> <p>19 have told you?</p> <p>20 A Of course.</p> <p>21 Q All right. Do you include what the lawyers</p> <p>22 told you before you signed this declaration?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">167</p>
<p>1 Q (BY MR. KILBORN:) That's not personal</p> <p>2 knowledge, is it?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 Q (BY MR. KILBORN:) That's not personal</p> <p>5 knowledge, is it?</p> <p>6 A That is certainly your opinion.</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 Q (BY MR. KILBORN:) Well, are you telling the</p> <p>9 court today since you're under oath in this deposition</p> <p>10 that all of this information in here is based on your</p> <p>11 personal knowledge?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: In good faith with subject</p> <p>14 matter experts that I confirmed this information is</p> <p>15 correct, yes, to the scope of my work, yes, sir.</p> <p>16 Q (BY MR. KILBORN:) In good faith and with</p> <p>17 subject matter experts?</p> <p>18 A That's correct.</p> <p>19 Q And the subject matter experts would be the</p> <p>20 lawyers?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: That's right.</p> <p>23 Q (BY MR. KILBORN:) You never heard of 28 USC</p> <p style="text-align: right;">166</p>	<p>1 THE WITNESS: Do you want me to answer?</p> <p>2 BY MR. SCOFIELD: Can you read back the</p> <p>3 question?</p> <p>4</p> <p>5 (Whereupon, the last question was read back by</p> <p>6 the court reporter.)</p> <p>7</p> <p>8 BY MR. SCOFIELD: And certainly that doesn't</p> <p>9 call for the revelation of what was told, but if you</p> <p>10 relied on representations made by counsel, you can</p> <p>11 certainly testify to that.</p> <p>12 THE WITNESS: Yes.</p> <p>13 Q (BY MR. KILBORN:) So you include in the</p> <p>14 words my personal knowledge what your lawyers told you</p> <p>15 was true?</p> <p>16 A That's right.</p> <p>17 Q And you did not independently verify --</p> <p>18 Whether or not the lawyer stating that HMA and HMMA are</p> <p>19 legally distinct and separate corporate entities in</p> <p>20 paragraph nine, you did not independently verify that,</p> <p>21 did you?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: No, sir.</p> <p style="text-align: right;">168</p>

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<p>1 Q (BY MR. KILBORN:) As a matter of fact, you</p> <p>2 wouldn't know how to independently verify that, would</p> <p>3 you?</p> <p>4 A No, sir.</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 Q (BY MR. KILBORN:) That is totally beyond</p> <p>7 your expertise, isn't it?</p> <p>8 A I don't think my expertise, but it certainly</p> <p>9 isn't within the scope of my work. And I do have</p> <p>10 subject matter experts that are much better at it than</p> <p>11 I am.</p> <p>12 Q Well, where would you go to find whether</p> <p>13 or not HMMA and HMA are legally separate and distinct</p> <p>14 corporate entities? Where would you start?</p> <p>15 A I would start with my in-house counsel --</p> <p>16 Q Somebody else?</p> <p>17 A -- that are experts in that field as well as</p> <p>18 they come to me for expert information in human</p> <p>19 resources.</p> <p>20 Q Did anyone -- Strike that.</p> <p>21 Did any expats have anything to do with in</p> <p>22 any way, shape or form the decision to terminate the</p> <p>23 plaintiff?</p> <p style="text-align: right;">169</p>	<p>1 certainly you can describe Mr. Neal's role in the</p> <p>2 process, but because he is a vice president general</p> <p>3 counsel in the company, I'm instructing the witness not</p> <p>4 to provide any information with regard to any advice</p> <p>5 rendered by Mr. Neal based on attorney-client</p> <p>6 privilege.</p> <p>7 Q (BY MR. KILBORN:) What did Mr. Neal have to</p> <p>8 do with Mr. Dees' termination?</p> <p>9 A Mr. Neal --</p> <p>10 BY MR. SCOFIELD: Same objection.</p> <p>11 THE WITNESS: -- sits on our termination</p> <p>12 committee meeting, but he serves as an adviser. He is</p> <p>13 not involved in the decision making, he merely provides</p> <p>14 legal advice in that form.</p> <p>15 Q (BY MR. KILBORN:) So you've got a</p> <p>16 termination committee?</p> <p>17 A Uh-huh.</p> <p>18 Q And who is on that committee?</p> <p>19 A Myself, my assistant manager of employment,</p> <p>20 the manager for team relations, the assistant manager</p> <p>21 for team relations and it varies depending on which</p> <p>22 department, but it's the head of departments that</p> <p>23 participates. And the vice president of the division</p> <p style="text-align: right;">171</p>
<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 THE WITNESS: You're speaking of Mr. Dees?</p> <p>3 Q (BY MR. KILBORN:) Yes.</p> <p>4 A Did any expats? Repeat the question.</p> <p>5 Q I'll ask it again. It's a very broad</p> <p>6 question intentionally.</p> <p>7 Did any of the expats have anything to do</p> <p>8 with in any way, shape or form the decision to</p> <p>9 terminate the plaintiff?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: No.</p> <p>12 Q (BY MR. KILBORN:) Did any expats in any way,</p> <p>13 shape or form have anything to do with anything</p> <p>14 subsequent to that regarding his termination before</p> <p>15 this lawsuit was filed?</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 THE WITNESS: Not that I'm aware of of my own</p> <p>18 knowledge, no.</p> <p>19 Q (BY MR. KILBORN:) Do -- Well, I know</p> <p>20 Mr. Neal has stated to have discoverable information</p> <p>21 about Mr. Dees' termination. What did Mr. Neal have to</p> <p>22 do with his termination?</p> <p>23 BY MR. SCOFIELD: Object to the form. Again,</p> <p style="text-align: right;">170</p>	<p>1 is invited if he chooses to attend.</p> <p>2 Q What's his name?</p> <p>3 A It depends on the division. Typically, the</p> <p>4 bulk of them are production. The bulk of our staff is</p> <p>5 in production, so in this particular case, as well as</p> <p>6 most of them, is the vice president for production who</p> <p>7 is John Kalson.</p> <p>8 Q What's his name?</p> <p>9 A John Kalson, K-A-L-S-O-N.</p> <p>10 And then the head of department depending on</p> <p>11 which department it is, so that would rotate depending</p> <p>12 on the individual that's being recommended for</p> <p>13 termination, but the constant members are the human</p> <p>14 resource people.</p> <p>15 Q Are the actions of the termination committee</p> <p>16 visible to any of the expats?</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 THE WITNESS: I'm not sure I understand,</p> <p>19 let's try again.</p> <p>20 Q (BY MR. KILBORN:) Are the actions of the</p> <p>21 termination committee visible, that is known by or do</p> <p>22 they have access to, to any expats?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">172</p>

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<p>1 THE WITNESS: As a courtesy, we inform the</p> <p>2 vice president for human resources, my boss, and my HR</p> <p>3 coordinator in case the department Korean coordinators</p> <p>4 have a question about the decision. We do let them</p> <p>5 know of the outcome, but they don't have any decision</p> <p>6 making in what the outcome is.</p> <p>7 Q (BY MR. KILBORN:) And so you would have</p> <p>8 notified your boss as a courtesy?</p> <p>9 A Yes, I would have told him.</p> <p>10 Q And that would have been Mr. Ryu?</p> <p>11 A Correct. And then my coordinator, who is</p> <p>12 also named Mr. Ryu.</p> <p>13 Q Would you have notified verbally or in</p> <p>14 writing or E-mail?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: I would have verbally told him.</p> <p>17 Q (BY MR. KILBORN:) Do you routinely just do</p> <p>18 everything verbally?</p> <p>19 A With our coordinators, with the English</p> <p>20 barrier, we do communicate verbally a lot. In terms of</p> <p>21 policies or approval, certainly it's in writing, but</p> <p>22 that type of information would have been discussed in a</p> <p>23 confidential room but verbally told to them.</p> <p style="text-align: right;">173</p>	<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 THE WITNESS: Because of the language</p> <p>3 barrier, yes, it would be hard for them to read it and</p> <p>4 the sense of urgency, we would want to tell them right</p> <p>5 away.</p> <p>6 Q (BY MR. KILBORN:) Mr. Ryu is not able to</p> <p>7 read English?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: He can read it, but it does</p> <p>10 take him more time. He may have questions, so it's</p> <p>11 easier to explain it to him face-to-face.</p> <p>12 Q (BY MR. KILBORN:) And Mr. Neal is a standing</p> <p>13 member of the termination committee?</p> <p>14 A As an adviser, yes.</p> <p>15 Q He attends all termination committee</p> <p>16 meetings?</p> <p>17 A Yes, sir.</p> <p>18 Q Does he have a boss within HMMA?</p> <p>19 A The president.</p> <p>20 BY MR. SCOFIELD: Object to the form.</p> <p>21 Q (BY MR. KILBORN:) Excuse me?</p> <p>22 A The president.</p> <p>23 Q Mr. Ahn?</p> <p style="text-align: right;">175</p>
<p>1 Q A confidential room?</p> <p>2 A We are in an open concept. All of our desks</p> <p>3 are in cubes. We would have discussed that in a</p> <p>4 conference room.</p> <p>5 Q Is that routine to do that?</p> <p>6 A Yes, sir.</p> <p>7 Q So whenever there's a termination, you meet</p> <p>8 with your boss, Mr. Ryu --</p> <p>9 A And inform him of the decision.</p> <p>10 Q -- in a confidential room?</p> <p>11 A Yes.</p> <p>12 Q And inform him of a termination?</p> <p>13 A Yes, pending.</p> <p>14 Q And you did that with Mr. Dees?</p> <p>15 A Yes, I did.</p> <p>16 Q Anybody else -- Any other expat, other than</p> <p>17 Mr. Ryu?</p> <p>18 A And my coordinator -- HR coordinator as well.</p> <p>19 Q So there's no written record or electronic</p> <p>20 record of you informing Mr. Ryu of any termination?</p> <p>21 A No, sir.</p> <p>22 Q Is that routine, that there is no written</p> <p>23 record of that?</p> <p style="text-align: right;">174</p>	<p>1 A Yes.</p> <p>2 Q But Mr. Ahn works for HMC?</p> <p>3 A But he does report to the president on all</p> <p>4 legal matters.</p> <p>5 Q But he does work for HMC, Mr. Ahn?</p> <p>6 A Yes.</p> <p>7 Q And he also works for HMMA, too, doesn't he?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: He does, as an expat.</p> <p>10 Q (BY MR. KILBORN:) Like Mr. Kim and Mr. Ryu?</p> <p>11 A Yes.</p> <p>12 Q What other Hyundai affiliates does Mr. Ahn,</p> <p>13 Mr. Kim and Mr. Ryu work for?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: None that I know except their</p> <p>16 parent company which is HMC.</p> <p>17 Q (BY MR. KILBORN:) And I'll include Mr. Jason</p> <p>18 Lee in that group, too. Mr. Ahn, Kim, Lee and Ryu?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: HMC.</p> <p>21 Q (BY MR. KILBORN:) So you definitely know</p> <p>22 that those four work for HMC and HMMA?</p> <p>23 A Uh-huh.</p> <p style="text-align: right;">176</p>

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<p>1 Q And you don't know if there are any others</p> <p>2 that work for both those corporations?</p> <p>3 A They all do.</p> <p>4 Q They all do?</p> <p>5 A Yes, sir.</p> <p>6 Q Do you know of any other Hyundai affiliates</p> <p>7 that those four work for outside of HMC and HMMA?</p> <p>8 A No.</p> <p>9 Q They could work for, for instance, any other</p> <p>10 Hyundai affiliate?</p> <p>11 A Not that I'm aware of.</p> <p>12 Q But they could?</p> <p>13 A I would not have that knowledge if they did.</p> <p>14 Q You don't know one way or the other?</p> <p>15 A My understanding is that they work for HMC.</p> <p>16 That's where we get all of their information, when</p> <p>17 they're coming, when they're leaving, when they're</p> <p>18 going for training, when their move is pending. I only</p> <p>19 communicate with HMC in regards to those expats.</p> <p>20 Q Does Mr. Chung, Sr. or Jr. work for HMMA?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: I wouldn't know.</p> <p>23 Q (BY MR. KILBORN:) How about HMA?</p> <p style="text-align: right;">177</p>	<p>1 well as all the other automotive companies, it's the</p> <p>2 same scenario. Many of the original team members from</p> <p>3 the parent company come to train and to support the</p> <p>4 plant startup and it didn't seem out of the ordinary</p> <p>5 for me. As I said, we had over three hundred at</p> <p>6 Toyota. And I know Mercedes, we benchmarked with</p> <p>7 Mercedes and Honda, it's the same format and setup, so</p> <p>8 I didn't see that that was out of the ordinary.</p> <p>9 Q (BY MR. KILBORN:) Do you remember my</p> <p>10 question?</p> <p>11 A Yes, your question was why I didn't put</p> <p>12 seventy-eight expats in here in the -- on the page.</p> <p>13 Q Here's my question --</p> <p>14 A Uh-huh.</p> <p>15 Q -- in filing a declaration with the federal</p> <p>16 court under oath under penalty of perjury on the</p> <p>17 subject of relationships with two corporations, don't</p> <p>18 you think that it would be relevant to state that</p> <p>19 you've got seventy-eight people that work for both</p> <p>20 companies?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: But they're only here on loan.</p> <p>23 They're not working for both companies, they're just</p> <p style="text-align: right;">179</p>
<p>1 A They're not on our payroll, HMMA. There's no</p> <p>2 Mr. Chung on my payroll.</p> <p>3 Q In describing to the court the relationship</p> <p>4 between HMMA, HMC or HMA, did you think it not</p> <p>5 important to state that you got seventy-eight expats</p> <p>6 who work for both HMC and HMMA?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: I guess I'm not understanding</p> <p>9 your question.</p> <p>10 Q (BY MR. KILBORN:) Why didn't you think it</p> <p>11 important to tell the court in this declaration that</p> <p>12 you have seventy-eight expats that work for both</p> <p>13 companies?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: I'm not certain what the</p> <p>16 relevance would have been.</p> <p>17 Q (BY MR. KILBORN:) Well, do you think -- do</p> <p>18 you think the fact that you've got seventy-eight people</p> <p>19 working for two companies would be an irrelevant fact</p> <p>20 to a declaration under oath about whether or not the</p> <p>21 two companies had any relationship?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: Again, in my experiences as</p> <p style="text-align: right;">178</p>	<p>1 here on loan.</p> <p>2 BY MR. SCOFIELD: Object to the form.</p> <p>3 To clarify, Ms. Warner, and correct me if I'm</p> <p>4 wrong --</p> <p>5 BY MR. KILBORN: I don't want you testifying.</p> <p>6 If y'all want to go outside and discuss her testimony,</p> <p>7 just ask me and I'll --</p> <p>8 BY MR. SCOFIELD: Well, then, give me a</p> <p>9 standing objection.</p> <p>10 Q (BY MR. KILBORN:) How many expats work at</p> <p>11 HMA?</p> <p>12 A I don't know.</p> <p>13 Q Could be seventy-eight, couldn't it?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: I'd be guessing.</p> <p>16 Q (BY MR. KILBORN:) Could be three hundred and</p> <p>17 seventy-eight, couldn't it?</p> <p>18 BY MR. SCOFIELD: Same objection.</p> <p>19 THE WITNESS: Doubtful.</p> <p>20 Q (BY MR. KILBORN:) Could be none, couldn't</p> <p>21 it?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: I'd be speculating.</p> <p style="text-align: right;">180</p>

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<p>1 Q (BY MR. KILBORN:) Have you ever created an 2 L.L.C. or a corporation? 3 BY MR. SCOFIELD: Object to the form. 4 THE WITNESS: No. 5 Q (BY MR. KILBORN:) Have you ever created any 6 kind of legal entity? 7 A No. 8 Q When you say in your declaration, for 9 instance, in paragraphs seven and eight, it is my 10 understanding, what you're telling us is that this is 11 what somebody else has told you? 12 BY MR. SCOFIELD: Object to the form. 13 THE WITNESS: It's based on the observation 14 of that form as well as my own visit to Hyundai Motor 15 America and exchanging information and having knowledge 16 of what their key responsibilities are, yes. 17 Q (BY MR. KILBORN:) Whose key 18 responsibilities? 19 A HMA. As I told you, I visited HMA and I have 20 regular meetings with their human resources department, 21 so we certainly discuss what roles and responsibilities 22 each group has. 23 Q And when you use the words in this deposition</p> <p style="text-align: right;">181</p>	<p>1 means? 2 BY MR. SCOFIELD: Object to the form. 3 THE WITNESS: No. 4 Q (BY MR. KILBORN:) With regard to the 5 manufacture of automobiles by HMMA, are those 6 automobiles sold to any other entity, other than 7 through the money gating operation that you described 8 where those cars are money gated to HMA? 9 A Not to my knowledge, no. 10 Q So is it correct that the sold buyer or 11 receiver of manufactured vehicles would be HMA? 12 BY MR. SCOFIELD: Object to the form. 13 THE WITNESS: Yes, sir. 14 Q (BY MR. KILBORN:) And does HMA only buy 15 Hyundai vehicles from HMMA? 16 BY MR. SCOFIELD: Object to the form. 17 THE WITNESS: I don't know that. 18 Q (BY MR. KILBORN:) Why wouldn't you know 19 that? 20 A Because I don't work for HMA. I would assume 21 that they buy them from all the other manufacturing 22 plants throughout the world, but I don't know that for 23 a fact.</p> <p style="text-align: right;">183</p>
<p>1 roles and responsibilities or similar type words, 2 you're limiting your answers to human resources -- 3 A Yes, that's right. 4 Q -- because that's what you know about? 5 BY MR. SCOFIELD: Object to the form. 6 Q (BY MR. KILBORN:) You are not speaking 7 outside of human resources, are you? 8 A That would be correct, except my general 9 knowledge about Hyundai and having been with the 10 company for almost five years. 11 Q Which you've told us about? 12 A Yes, sir, uh-huh. 13 Q Do you want to add any other experiences that 14 you want to base your personal knowledge on? 15 BY MR. SCOFIELD: Object to the form. 16 THE WITNESS: I think I've covered it. 17 Q (BY MR. KILBORN:) Okay. Do you know what 18 the term subsidiary means? 19 A Yeah, subsidiary is something that's 20 underneath a particular corporation. It's still a part 21 of the organization, but it's a subset of the original 22 company. 23 Q Do you know what the term capitol stock</p> <p style="text-align: right;">182</p>	<p>1 Q You believe that HMA buys Hyundais from other 2 manufacturing plants throughout the world? 3 A That are Hyundai built, yes. 4 Q And what do you base that on? 5 A That would be just my supposition. I don't 6 have actual knowledge of that, but that would be my 7 supposition. I do know for a fact that they do buy our 8 vehicles, our Sonatas and our Santa Fes. 9 Q You're guessing at that, aren't you? 10 BY MR. SCOFIELD: Object to the form. 11 THE WITNESS: On the Santa Fes and Sonatas, I 12 wouldn't be guessing on that, no. 13 Q (BY MR. KILBORN:) No, you're guessing on the 14 subject. Does HMA buy other Hyundai vehicles? 15 A I don't know that for a fact. 16 Q You're guessing? 17 A That would be true. 18 Q When you say supposition, you're guessing? 19 A Yes. 20 Q You don't know one way or the other? 21 A Only my experience with Toyota, I would 22 assume that would be a normal structure, but I don't 23 have that guarantee that that's the way it's done at</p> <p style="text-align: right;">184</p>

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<p>1 Hyundai.</p> <p>2 Q Assuming means you don't know?</p> <p>3 A That would be correct.</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 Q (BY MR. KILBORN:) And we're not talking</p> <p>6 about Toyota, are we?</p> <p>7 A No, we're not.</p> <p>8 Q Who does HMMA buy its parts from?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: I don't know, it's handled by</p> <p>11 our purchasing department.</p> <p>12 Q (BY MR. KILBORN:) Does HMA sell parts to</p> <p>13 HMMA?</p> <p>14 A I don't know.</p> <p>15 Q Does HMC sell parts to HMA?</p> <p>16 A I don't know.</p> <p>17 Q Do HMC, HMA and HMMA buy and sell goods to</p> <p>18 each other?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: I don't know.</p> <p>21 Q (BY MR. KILBORN:) You do know that they loan</p> <p>22 employees to each other?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">185</p>	<p>1 HMMA of property of any type that's owned by the other?</p> <p>2 BY MR. SCOFIELD: Object to the form.</p> <p>3 THE WITNESS: I don't know.</p> <p>4 Q (BY MR. KILBORN:) If, for instance,</p> <p>5 automobiles are money gated to HMA in California -- And</p> <p>6 I notice that some of your -- all of your team members</p> <p>7 have the ability to lease a Hyundai, I suppose at a</p> <p>8 better rate than some of us would --</p> <p>9 A Uh-huh.</p> <p>10 Q -- how does that work?</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 THE WITNESS: We have a vehicle services</p> <p>13 group in our general affairs area and they will analyze</p> <p>14 what the cost of the vehicle would be and they can</p> <p>15 purchase it for the team member at a discounted rate,</p> <p>16 but I don't know how the car is ordered and who pays</p> <p>17 for that -- the team member pays for it, but I do know</p> <p>18 that we do offer that service to our team members.</p> <p>19 Q (BY MR. KILBORN:) Well, if the vehicle is --</p> <p>20 once the manufacture is completed or money gated to</p> <p>21 HMA, does HMA then own them?</p> <p>22 A Yeah. Yes.</p> <p>23 Q And does HMA then lease them back to the HMMA</p> <p style="text-align: right;">187</p>
<p>1 THE WITNESS: I know that Keith Duckworth was</p> <p>2 on loan from HMA for two years and he left in August to</p> <p>3 return to HMA.</p> <p>4 Q (BY MR. KILBORN:) How many employees are on</p> <p>5 loan from HMC to HMA?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: We don't have on loan, they're</p> <p>8 expats. There's seventy-eight of them.</p> <p>9 Q (BY MR. KILBORN:) I'm talking about HMMA.</p> <p>10 How many employees are on loan from HMC in</p> <p>11 Seoul to HMA?</p> <p>12 A I don't work for HMA. I don't know.</p> <p>13 Q Do you know whether or not there is any</p> <p>14 properties like land or personal property --</p> <p>15 A No, sir.</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 Let him finish his question.</p> <p>18 THE WITNESS: Okay.</p> <p>19 Q (BY MR. KILBORN:) Do you know if there's any</p> <p>20 property, land or personal property, from computers to</p> <p>21 paper clips to automobiles to whatever that is used by</p> <p>22 in one way or another one of those three corporations?</p> <p>23 In other words, is there any usage by HMC or HMA or</p> <p style="text-align: right;">186</p>	<p>1 employees?</p> <p>2 A That's right.</p> <p>3 Q Okay. And you've seen the leases?</p> <p>4 A My husband has a lease, yes, through HMA.</p> <p>5 Q And his lease on his Hyundai is with HMA?</p> <p>6 A Right.</p> <p>7 Q Do you know if HMA paid any money for that</p> <p>8 automobile?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: No.</p> <p>11 Q (BY MR. KILBORN:) Since you don't know the</p> <p>12 capitalization of HMA or HMMA, you don't know what --</p> <p>13 the capitalization requirements of those two companies</p> <p>14 are, do you?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: No, sir.</p> <p>17 BY MR. SCOFIELD: Did this come from that</p> <p>18 green folder?</p> <p>19 BY MR. SPORT: Yes.</p> <p>20 BY MR. KILBORN: It's 12:30, we definitely</p> <p>21 are going to be here this afternoon. What's your</p> <p>22 pleasure, you want to take a lunch break?</p> <p>23 BY MR. SCOFIELD: It's up to Ms. Warner. We</p> <p style="text-align: right;">188</p>

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<p>1 can go through or we can take a break.</p> <p>2 THE WITNESS: How much longer do you</p> <p>3 anticipate?</p> <p>4 BY MR. KILBORN: Several hours I'd say.</p> <p>5 THE WITNESS: We probably need to break then</p> <p>6</p> <p>7 (Whereupon, there was a recess held in the</p> <p>8 deposition.)</p> <p>9</p> <p>10 BY MR. KILBORN: Trent, I'm just going to</p> <p>11 mark that Hyundai file that you gave me. I think it's</p> <p>12 1 through 93.</p> <p>13 BY MR. SCOFIELD: The one in connection with</p> <p>14 our original document production?</p> <p>15 BY MR. KILBORN: This is just the format that</p> <p>16 you gave it to me.</p> <p>17 BY MR. SCOFIELD: Okay.</p> <p>18 BY MR. KILBORN: I just thought it was easier</p> <p>19 to just refer to Bates Number.</p> <p>20 BY MR. SCOFIELD: That's fine.</p> <p>21 BY MR. KILBORN: And once we copy the</p> <p>22 personnel file, then I'll be able to identify what part</p> <p>23 of this is personnel. I think it's 1 through 75.</p> <p style="text-align: right;">189</p>	<p>1 an individual that purposefully was sleeping on the</p> <p>2 job, yes.</p> <p>3 Q (BY MR. KILBORN:) And what is it about</p> <p>4 sleeping on the job with Mr. Dees that lifted it to a</p> <p>5 firing offense?</p> <p>6 A He was not in the location where he should</p> <p>7 have been working. He was sitting in a chair with two</p> <p>8 of the doors opened to allow him privacy to sleep and</p> <p>9 it was observed by a member of our management.</p> <p>10 Q So he was in the wrong location and what</p> <p>11 else?</p> <p>12 A Sitting in a chair sleeping with a pillow and</p> <p>13 two of the doors that were open to an area that is only</p> <p>14 used very rarely. He was on the third floor of the</p> <p>15 building, not on the first floor where the stamping</p> <p>16 presses are in the department where he works.</p> <p>17 Q And you said that he had pillows?</p> <p>18 A My understanding was that he did have a</p> <p>19 pillow that was propped up.</p> <p>20 Q Like what kind of pillow?</p> <p>21 A Something to -- for his head. I don't know</p> <p>22 if it was pillow, but it was something propped up to</p> <p>23 hold his head up to sleep.</p> <p style="text-align: right;">191</p>
<p>1 BY MR. SCOFIELD: Whatever works with you</p> <p>2 guys.</p> <p>3 BY MR. KILBORN: I'm just trying to be</p> <p>4 efficient.</p> <p>5</p> <p>6 (Whereupon, Plaintiff's Exhibit 9 was marked</p> <p>7 for identification and copy of same is</p> <p>8 attached hereto.)</p> <p>9</p> <p>10 Q (BY MR. KILBORN:) Ms. Warner, are you ready?</p> <p>11 A Yes, sir.</p> <p>12 Q Ms. Warner, I understand that Mr. Dees was</p> <p>13 terminated because he slept on the job; is that</p> <p>14 correct?</p> <p>15 A Yes, sir.</p> <p>16 Q Is sleeping on the job always a firing</p> <p>17 offense at HMMA?</p> <p>18 BY MR. SCOFIELD: Object to the form.</p> <p>19 You can answer.</p> <p>20 THE WITNESS: To the degree that he was found</p> <p>21 sleeping on the job, yes. We have had situations that</p> <p>22 individuals had sleep apnea or they fell asleep, just</p> <p>23 nodded off, that would not constitute termination, but</p> <p style="text-align: right;">190</p>	<p>1 Q So basically HMMA determined that you had a</p> <p>2 deliberate, willful, egregious sleeping on the job?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: Yes, sir.</p> <p>5 Q (BY MR. KILBORN:) Okay. Why is it that</p> <p>6 that's the standard and Mr. Chung -- Chairman Chung</p> <p>7 gets convicted of wrongfully diverting money from</p> <p>8 financially healthy members of Hyundai Motor Group,</p> <p>9 he's sentenced to, I think, six years in prison and</p> <p>10 he's welcomed back with open arms in the company and</p> <p>11 yet here you've got a war hero named Leon Dees who</p> <p>12 sleeps on the job and he's terminated? How do those</p> <p>13 two standards fit?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: Again, there's no correlation</p> <p>16 because Mr. Chung doesn't work for HMMA. Leon Dees</p> <p>17 does work for HMMA and we have policies and procedures</p> <p>18 pertaining to this particular plant that he did not</p> <p>19 follow.</p> <p>20 Q (BY MR. KILBORN:) But Mr. Chung basically</p> <p>21 started the company, started the plant, started HMMA</p> <p>22 and controls it, doesn't it?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">192</p>

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<p>1 THE WITNESS: He doesn't fall under the</p> <p>2 jurisdiction of our policies and procedure, Leon Dees</p> <p>3 does.</p> <p>4 Q (BY MR. KILBORN:) Why doesn't he?</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 THE WITNESS: Because Mr. Chung doesn't work</p> <p>7 for HMMA.</p> <p>8 Q (BY MR. KILBORN:) So Mr. Chung has a</p> <p>9 different standard?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: I would assume so. Again, he</p> <p>12 is not one of my employees, Mr. Dees is.</p> <p>13 Q (BY MR. KILBORN:) You think Mr. Chung if</p> <p>14 called to testify in this case would say I sure do</p> <p>15 think he should have been fired?</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 THE WITNESS: It would be speculation on my</p> <p>18 part. I don't know what he would say.</p> <p>19 Q (BY MR. KILBORN:) Well, he'd probably be</p> <p>20 outraged that Mr. Dees got fired, wouldn't he?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: I wouldn't know. I'd be</p> <p>23 speculating on what someone would think or feel or say.</p> <p style="text-align: right;">193</p>	<p>1 reality.</p> <p>2 Q (BY MR. KILBORN:) Or just assume that he</p> <p>3 did, would that be a firing offense?</p> <p>4 A Of course.</p> <p>5 BY MR. SCOFIELD: Same objection.</p> <p>6 Q (BY MR. KILBORN:) To your knowledge, have</p> <p>7 any expats been terminated for sleeping on the job?</p> <p>8 A Not that I'm aware of, no. And, again, that</p> <p>9 would have been under the HR coordinator's rule of</p> <p>10 engagement.</p> <p>11 Q Have any of the expats been terminated,</p> <p>12 period, to your knowledge?</p> <p>13 A Not that I'm aware of, no.</p> <p>14 Q And you've been there, what, a little over</p> <p>15 four years?</p> <p>16 A Uh-huh.</p> <p>17 Q Have you ever seen any of them sleeping on</p> <p>18 the job?</p> <p>19 A No, sir.</p> <p>20 Q Take a look at Exhibit 9. This is a</p> <p>21 collection of documents produced by Hyundai, Bates</p> <p>22 Numbered 1 through 93. I'll just refer to them by</p> <p>23 Bates Number.</p> <p style="text-align: right;">195</p>
<p>1 Q (BY MR. KILBORN:) But you did meet him,</p> <p>2 right?</p> <p>3 A Mr. Chung?</p> <p>4 Q Right.</p> <p>5 A Yes, at a dinner.</p> <p>6 Q And you did speak to him?</p> <p>7 A He thanked me for my service and I thanked</p> <p>8 him as well.</p> <p>9 Q Well, let's just assume that Mr. Chung did</p> <p>10 work at HMMA and, say, embezzled a hundred million</p> <p>11 dollars, what would you do to him as an HMMA HR person?</p> <p>12 A I would have to --</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: -- investigate it before I</p> <p>15 would make any kind of conclusion or supposition about</p> <p>16 it.</p> <p>17 Q (BY MR. KILBORN:) Well, let's say you</p> <p>18 investigate it and you found that he diverted -- you</p> <p>19 know, he criminally diverted over a hundred million</p> <p>20 dollars?</p> <p>21 A Supposition on my part again.</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: It's not something that's</p> <p style="text-align: right;">194</p>	<p>1 A Okay.</p> <p>2 Q The first document, document number 1, is a</p> <p>3 letter that you wrote to Mr. Dees dated March 7, 2007.</p> <p>4 Did you write that letter yourself?</p> <p>5 A It's a standard letter that's drafted by our</p> <p>6 team relations group, but I did review it and did know</p> <p>7 that it was being sent out.</p> <p>8 Q But my question is: Did you draft it?</p> <p>9 A No.</p> <p>10 Q Do you have personal knowledge of the</p> <p>11 information in there?</p> <p>12 A Yes.</p> <p>13 Q And how do you know that he was, quote, left</p> <p>14 a phone message on March 2nd, 2007?</p> <p>15 A My assistant manager in team relations,</p> <p>16 Rob Clevenger, informed me of that.</p> <p>17 Q So it's what somebody told you?</p> <p>18 A That's correct.</p> <p>19 Q Well, is there anything in there that you</p> <p>20 know of of your own personal knowledge as opposed to</p> <p>21 hearsay?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: This information was given to</p> <p style="text-align: right;">196</p>

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<p>1 me by an assistant manager in team relations. I the 2 letter and agreed that it needed to be sent out.</p> <p>3 Q (BY MR. KILBORN:) My question was: Is there 4 information in here other than hearsay?</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 THE WITNESS: I don't believe it was hearsay.</p> <p>7 I object to the statement that it was hearsay.</p> <p>8 Q (BY MR. KILBORN:) You object to that, okay.</p> <p>9 Do you know what hearsay is?</p> <p>10 A I do.</p> <p>11 Q Hearsay is what somebody else told you.</p> <p>12 Is there anything in here other than what 13 somebody told you?</p> <p>14 A Hearsay in my opinion sounds more of the 15 comment that it's not accurate.</p> <p>16 Q And who told you that?</p> <p>17 A It's my own belief of what hearsay means.</p> <p>18 Q Well, let's change the term. Let's just say 19 what somebody else told you.</p> <p>20 A That would be correct.</p> <p>21 Q Is there anything in here that you know 22 personally yourself other than what somebody else told 23 you?</p> <p style="text-align: right;">197</p>	<p>1 head of department, Mr. Applegate, and a team relations 2 representative was there. And he was escorted over 3 when he arrived at work with his supervisor, 4 Mr. Applegate. And then I let Mr. Dees know what the 5 situation was. We collected his personal property and 6 he was escorted out by security.</p> <p>7 Q Did he know when he got to work that he was 8 going to be escorted over to security?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: He would not have known that, 11 no.</p> <p>12 Q (BY MR. KILBORN:) Why wasn't he given 13 advance notice?</p> <p>14 A When he arrived, he was given that notice.</p> <p>15 Q By who?</p> <p>16 A At the turnstiles, security would have 17 escorted him to a vehicle and then the department head 18 would have escorted him back over to the security 19 building.</p> <p>20 Q These security, are these Hyundai employees?</p> <p>21 A They're not.</p> <p>22 Q Who are they?</p> <p>23 A They're a contracted group, outsourced, to</p> <p style="text-align: right;">199</p>
<p>1 A No.</p> <p>2 Q Was the meeting with the termination 3 committee that you told me about already held when this 4 letter was written?</p> <p>5 A Yes.</p> <p>6 Q Now, Mr. Dees had already been fired at this 7 time, hadn't he?</p> <p>8 A Yes.</p> <p>9 Q And are you aware of the circumstances of his 10 firing --</p> <p>11 A Yes.</p> <p>12 Q -- how he was fired?</p> <p>13 Tell me how he was fired.</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: I need more information. Are 16 you speaking directly of the meeting that we had with 17 him or are you speaking directly to the -- how the 18 decision was made?</p> <p>19 Q (BY MR. KILBORN:) Well, tell me about the 20 meeting that you had with Mr. Dees.</p> <p>21 A The meeting was held with Mr. Dees after the 22 termination committee met. It was held over in the 23 security building. Myself, my assistant manager, the</p> <p style="text-align: right;">198</p>	<p>1 provide security.</p> <p>2 Q Are they in uniform?</p> <p>3 A Yes.</p> <p>4 Q What types of things do they carry, badges or 5 anything like that?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: They do have a badge, yes.</p> <p>8 They drive a Hyundai vehicle that says security on it.</p> <p>9 Q (BY MR. KILBORN:) Do they have any weapons?</p> <p>10 A No.</p> <p>11 Q Was that standard company policy as to how to 12 inform somebody?</p> <p>13 A Yes, sir.</p> <p>14 BY MR. SCOFIELD: Let him finish his 15 question.</p> <p>16 Q (BY MR. KILBORN:) It was a surprise?</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 THE WITNESS: They are aware of the fact that 19 it's under investigation, but it could have been a 20 surprise that it was that particular day that the 21 decision was made and they're escorted over, yes.</p> <p>22 Q (BY MR. KILBORN:) So Mr. Dees arrived 23 thinking he was going to go to work and Hyundai</p> <p style="text-align: right;">200</p>

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<p>1 surprised him by saying you're not going to work, 2 you're going to go with these security guards over to 3 the security building? 4 BY MR. SCOFIELD: Object to the form. 5 THE WITNESS: Yes. 6 Q (BY MR. KILBORN:) What's the purpose of 7 that? 8 A In an effort to ensure the safety and 9 security of the rest of our employees, once someone is 10 terminated, we don't want them back on-site. 11 Q So when you say escorted, in other words, 12 Mr. Dees was in the custody of security because you 13 didn't want him to be a danger to other employees? 14 BY MR. SCOFIELD: Object to the form. 15 THE WITNESS: It's not the best procedure to 16 have someone who's already left the company to be in 17 the building with other team members and other 18 employees. We feel this is the safest way, yes. 19 Q (BY MR. KILBORN:) But that's why it's done? 20 A Yes. 21 Q So he's not free to go, he's in the custody 22 of security? 23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">201</p>	<p>1 Q Why not call him and just tell him not to 2 come in? 3 A That's not our procedure. 4 Q I know that. Well, why not? 5 A We feel that we do want to talk with the 6 person. We don't feel that it's appropriate for him 7 not to understand the situation, as well as if he had 8 other property that we needed to understand what was 9 personal property, give him information about COBRA, 10 give him information about his last paycheck. 11 Q Well, you could have done that on the phone, 12 couldn't you? 13 A We feel that's fairly impersonal to do that. 14 Q Impersonal? 15 A Yes, sir. 16 Q So you did it in what you think was personal? 17 A That's right. Certainly if he had questions 18 that he needed more information about his benefits or 19 about his pay, we want to be able to speak to him 20 face-to-face about that. 21 Q So this was the gentlemanly way to do it? 22 BY MR. SCOFIELD: Object to the form. 23 THE WITNESS: It's our procedure.</p> <p style="text-align: right;">203</p>
<p>1 THE WITNESS: He's free to leave, he just is 2 not able to come into the building. If he chose to 3 leave, he could have left, but he was asked to come 4 over to security to speak to me so that he would have a 5 better understanding of the situation, as well as 6 collect company property. 7 Q (BY MR. KILBORN:) So the security guards are 8 instructed what to tell him? 9 A Yes. 10 Q Did you instruct them? 11 A My assistant manager for employment did, yes, 12 spoke with the security manager. 13 Q What would her name be? 14 A Scott Corriday. 15 Q Scott's a man? 16 A Yes. And he would have spoken to Larry Pugh 17 who is the security manager who he in turn would have 18 discussed it with the guards what the situation was, 19 where to pick the person up and what time that I would 20 be meeting with them. 21 Q You had his telephone number at home, didn't 22 you? 23 A Yes.</p> <p style="text-align: right;">202</p>	<p>1 Q (BY MR. KILBORN:) But it's the gentlemanly 2 way to do it? 3 BY MR. SCOFIELD: Object to the form. 4 THE WITNESS: Yes. 5 Q (BY MR. KILBORN:) It's the way that you 6 would like to be treated if you were being terminated? 7 A That's exactly right. 8 Q It's the way that Mr. Chung would like to be 9 treated if he was being terminated? 10 BY MR. SCOFIELD: Object to the form? 11 THE WITNESS: I wouldn't be able to answer 12 that for you. 13 Q (BY MR. KILBORN:) So then you did not have 14 him escorted to your office to tell him all of this? 15 A I don't have an office. 16 Q You don't? 17 A No, sir. 18 Q Well, tell me where -- Do you have a desk? 19 A We do. We all work in an open environment. 20 Q Okay. And you have these confidential rooms 21 that you told me about? 22 A We have conference rooms. 23 Q Why wasn't it done there?</p> <p style="text-align: right;">204</p>

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<p>1 A We don't feel that it's appropriate to bring 2 a person all the way through the building up the stairs 3 for all the other team members to see the situation, we 4 feel it's more appropriate and more -- the ability to 5 have a conversation with him without having all the 6 other team members involved and observing that 7 situation. As I said, we're a totally open office 8 environment, so it's very uncomfortable for that person 9 to have to walk through probably sixty cubes to get to 10 me.</p> <p>11 Q How is being escorted by security into the 12 security building any better than being escorted by 13 security into a -- say, a conference room?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: It's our opinion, again, from a 16 safety and security situation for our team members, for 17 him and it is more discreet and confidential to be able 18 to do that.</p> <p>19 Q (BY MR. KILBORN:) How many security guards 20 did you assign?</p> <p>21 A Two.</p> <p>22 Q Why two?</p> <p>23 A One drives and one waits for the other person</p> <p style="text-align: right;">205</p>	<p>1 Q So where are these values written down?</p> <p>2 A Handbook.</p> <p>3 Q In a handbook?</p> <p>4 A Yes, sir.</p> <p>5 Q All right. So basically when he was escorted 6 into the security building, you were conducting this 7 thing in accordance with HMMA's values?</p> <p>8 A With our policy on how to terminate people, 9 yes.</p> <p>10 Q But you said values.</p> <p>11 A Respect and dignity.</p> <p>12 Q They are the values though, right?</p> <p>13 A How we treat our team members, yes.</p> <p>14 Q Okay. So what we've got going on in the 15 security building is respect and dignity --</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 Q (BY MR. KILBORN:) -- is that right?</p> <p>18 A How we handle our terminations and how we 19 handle our team members from when they enter HMMA as 20 when they leave HMMA.</p> <p>21 Q And so you are sitting in the security 22 building?</p> <p>23 A Yes.</p> <p style="text-align: right;">207</p>
<p>1 at the turnstile.</p> <p>2 Q And an employee like Mr. Dees sits in the 3 back seat?</p> <p>4 A Yes, with his manager.</p> <p>5 Q With his manager?</p> <p>6 A Yeah, Mr. Applegate.</p> <p>7 Q So Mr. Applegate was there with the two 8 security guards?</p> <p>9 A That's right.</p> <p>10 Q Sort of a good morning type of an 11 arrangement?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: As I said, we take our 14 terminations very seriously, but we certainly want to 15 treat that person with respect and dignity. It's much 16 easier to call the person or to send a letter, but we 17 don't feel that's the right thing to do.</p> <p>18 Q (BY MR. KILBORN:) When you say we, who do 19 you mean?</p> <p>20 A I use we collectively, we as HMMA, our 21 values, our policies and procedures.</p> <p>22 Q You said values?</p> <p>23 A Yeah.</p> <p style="text-align: right;">206</p>	<p>1 Q And it's a special room there for purposes of 2 having a termination?</p> <p>3 A It's a conference room.</p> <p>4 Q That's where it all happens?</p> <p>5 A Uh-huh.</p> <p>6 Q Does it have windows?</p> <p>7 A No.</p> <p>8 Q Why not?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: The building is just built that 11 way. They have another room next to it that has all of 12 the security systems and electronics, so that may be 13 the reason, but that's just the way it was built. Now, 14 right outside the door there's windows, but not in that 15 conference room.</p> <p>16 Q (BY MR. KILBORN:) Does it have a door?</p> <p>17 A Yeah.</p> <p>18 Q Is the door shut?</p> <p>19 A The door is open when he comes in and the 20 door is shut when he arrives in there, again, because 21 there's desks right outside the area that we want to 22 have a confidential conversation with him, yes.</p> <p>23 Q The security people?</p> <p style="text-align: right;">208</p>

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<p>1 A Yeah, uh-huh.</p> <p>2 Q Are the security people inside the room?</p> <p>3 A No.</p> <p>4 Q They stand outside the room?</p> <p>5 A Yes.</p> <p>6 Q So they're guarding the door?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: They're in another room where</p> <p>9 they have roll call and things along those lines.</p> <p>10 Q (BY MR. KILBORN:) But they're watching the</p> <p>11 door?</p> <p>12 A Uh-huh, sure.</p> <p>13 Q They're watching Dees?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: They're ensuring that that</p> <p>16 person is going to follow our procedure. And if he</p> <p>17 does leave the area, they're going to escort him and</p> <p>18 take him to his vehicle.</p> <p>19 Q (BY MR. KILBORN:) So you don't want him</p> <p>20 making a get away? In other words, if he's going to</p> <p>21 leave that room, they're going to be on him?</p> <p>22 A That or if they hear me scream.</p> <p>23 Q If they hear you scream?</p> <p style="text-align: right;">209</p>	<p>1 BY MR. SCOFIELD: Object to the form. It's</p> <p>2 argumentative.</p> <p>3 And, Vince, just for the record, I'd ask that</p> <p>4 you lower your voice to the witness.</p> <p>5 THE WITNESS: I would have evaluated him as a</p> <p>6 maintenance team member. I would have evaluated him</p> <p>7 for hire based on his skills as a maintenance team</p> <p>8 member.</p> <p>9 Q (BY MR. KILBORN:) But you found a</p> <p>10 credibility issue because you didn't believe him and</p> <p>11 you did believe the team members; isn't that true?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: I believe the member of</p> <p>14 management that observed him sleeping, yes.</p> <p>15 Q (BY MR. KILBORN:) Applegate?</p> <p>16 A No.</p> <p>17 Q Who?</p> <p>18 A Jim Brookshire.</p> <p>19 Q Brookshire?</p> <p>20 A Yes.</p> <p>21 Q You found Brookshire more credible than Dees?</p> <p>22 A Based on the information that was shared with</p> <p>23 me, based on the time period, based on what his duties</p> <p style="text-align: right;">211</p>
<p>1 A Yes.</p> <p>2 Q Now, you knew that you were talking with a</p> <p>3 gentleman who was a member of the United States Armed</p> <p>4 Forces, right?</p> <p>5 A I did not.</p> <p>6 Q Did not know that?</p> <p>7 A Huh-uh.</p> <p>8 Q Okay. You did not know that he was -- he had</p> <p>9 served tours in both Iraq wars, did you?</p> <p>10 A No, sir.</p> <p>11 Q You didn't know that he was a member of</p> <p>12 the -- his combat commander's personal body guard, did</p> <p>13 you?</p> <p>14 A No, sir.</p> <p>15 Q You did not know that he had been recommended</p> <p>16 for the Bronze Star for bravery in combat, did you?</p> <p>17 A No, sir.</p> <p>18 Q You did not know that his job as combat MP</p> <p>19 was to basically provide security to the Armed Forces,</p> <p>20 did you?</p> <p>21 A No, sir, I did not.</p> <p>22 Q Well, why didn't you bother to find out who</p> <p>23 you were talking to?</p> <p style="text-align: right;">210</p>	<p>1 were, yes.</p> <p>2 Q And how much time had Brookshire served in</p> <p>3 the military?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: Again, that would not have been</p> <p>6 in my realm. I would have based his hiring again on</p> <p>7 his qualifications to be a manager for stamping.</p> <p>8 Q (BY MR. KILBORN:) Well, how many clusters</p> <p>9 for valor did Brookshire get?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: I don't know, sir. Again, that</p> <p>12 would not have been in my decision making to hire</p> <p>13 Mr. Brookshire as a manager to have known that.</p> <p>14 Q (BY MR. KILBORN:) So you didn't think that</p> <p>15 it was important in deciding a credibility issue to</p> <p>16 find out who the person really was that you were</p> <p>17 talking to, did you?</p> <p>18 BY MR. SCOFIELD: Object to the form.</p> <p>19 THE WITNESS: Based on the information, he</p> <p>20 did not follow a very important policy and, therefore,</p> <p>21 based on the evidence that was given to me, the</p> <p>22 decision was made to terminate him for sleeping on the</p> <p>23 job.</p> <p style="text-align: right;">212</p>

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<p>1 Q (BY MR. KILBORN:) You didn't believe him, 2 did you?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: I don't ever have -- I 5 didn't -- I don't understand the question from the 6 belief part frankly.</p> <p>7 Q (BY MR. KILBORN:) You had made the decision 8 to terminate him before he ever got in that room, 9 didn't you?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: The decision was already made, 12 that's correct.</p> <p>13 Q (BY MR. KILBORN:) But you hadn't interviewed 14 him, had you?</p> <p>15 A Team relations already did.</p> <p>16 Q But you had not?</p> <p>17 A I'm part of the termination committee. 18 That's not my role.</p> <p>19 BY MR. SCOFIELD: Just answer his question.</p> <p>20 Q (BY MR. KILBORN:) You had not interviewed 21 Mr. Dees, had you?</p> <p>22 A No.</p> <p>23 Q So that was the first time that you had ever</p> <p style="text-align: right;">213</p>	<p>1 compromised of several individuals, as well as the head 2 of the department and the vice president for 3 production, yes.</p> <p>4 Q (BY MR. KILBORN:) Well, don't you think 5 following this Hyundai values for respect and dignity 6 that he deserved at least five minutes of your valuable 7 time, number one, to see if he was a credible person?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: The investigation was already 10 completed. That's not my role.</p> <p>11 Q (BY MR. KILBORN:) That's not my question. 12 Don't you think that he deserved five minutes of your 13 valuable time for a one-on-one conversation before you 14 agreed with the decision of terminating?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: That's not our procedure.</p> <p>17 Q (BY MR. KILBORN:) Not your procedure?</p> <p>18 A No, sir.</p> <p>19 Q So you were not there to evaluate his 20 position, you were just there to fire him and get him 21 off the property as fast as possible?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: My responsibility is to</p> <p style="text-align: right;">215</p>
<p>1 talked to him?</p> <p>2 BY MR. SCOFIELD: Object to the form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 Q (BY MR. KILBORN:) And you were the human 5 relations manager, weren't you?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: I'm the human resource manager 8 for employment.</p> <p>9 Q (BY MR. KILBORN:) Right. And you were the 10 person in charge of this meeting in this room, weren't 11 you?</p> <p>12 A For the termination meeting, yes.</p> <p>13 Q So you sit at the head of the table?</p> <p>14 A Yes.</p> <p>15 Q All right. You had never met or talked to 16 Dees in your life?</p> <p>17 A Probably not, no.</p> <p>18 Q Okay. But you had already made a decision to 19 fire him taking the word of Brookshire over Dees, 20 hadn't you?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: As well as the team relations 23 investigation, as well as the termination committee</p> <p style="text-align: right;">214</p>	<p>1 communicate the decision, share with the team member 2 his rights, his benefits, when he's going to be 3 receiving his pay, make sure that we have all the 4 correct information for his W2 and collect company 5 property.</p> <p>6 Q (BY MR. KILBORN:) So how did you open the 7 conversation?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: How did I overcome the 10 conversation?</p> <p>11 Q (BY MR. KILBORN:) Did you say Mr. Dees, have 12 a seat or what?</p> <p>13 A I'm sorry, I don't understand.</p> <p>14 BY MR. SCOFIELD: I don't think she 15 understood your question.</p> <p>16 THE WITNESS: I'm sorry, I didn't understand 17 your question.</p> <p>18 Q (BY MR. KILBORN:) You're in the termination 19 room in the security building, you've got two security 20 guards outside the door, right?</p> <p>21 A Just one.</p> <p>22 Q You've got one outside the door?</p> <p>23 A Uh-huh.</p> <p style="text-align: right;">216</p>

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<p>1 Q They also make sure Dees wouldn't make a 2 getaway?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: Again, for our procedures, to 5 make sure that everything is followed, as well as that 6 he would be escorted off the property, but he could 7 have left any time he wanted to and he did.</p> <p>8 Q (BY MR. KILBORN:) So who started -- Did you 9 ask him to sit down?</p> <p>10 A I certainly did.</p> <p>11 Q Did he sit down?</p> <p>12 A He did.</p> <p>13 Q And you sat down?</p> <p>14 A Yes.</p> <p>15 Q You certainly introduced yourself first?</p> <p>16 A I did. I introduced everyone there. I made 17 sure that he knew who everyone was and I told him why 18 he was there.</p> <p>19 Q And they were all seated?</p> <p>20 A They all stood up and shook his hand, yes.</p> <p>21 Q And when they were shaking his hand, he 22 didn't know yet why he was there?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">217</p>	<p>1 Q So what, four?</p> <p>2 A Uh-huh.</p> <p>3 Q And the door was shut?</p> <p>4 A It was open when he came in and then I shut 5 it when I introduced myself and told him why he was 6 here.</p> <p>7 Q Okay. And did anybody do the talking besides 8 you?</p> <p>9 A No.</p> <p>10 Q What time of day or night was it?</p> <p>11 A It was in the evening. I do know that it was 12 late. It was beginning of second shift, so probably 13 quarter to six, 6:00.</p> <p>14 Q Do you have standard hours yourself?</p> <p>15 A I work first shift, but I normally work 7:00 16 to 7:00.</p> <p>17 Q And this was -- How many terminations had you 18 done like this before?</p> <p>19 A At HMMA?</p> <p>20 Q Sure.</p> <p>21 A Let's see, probably forty.</p> <p>22 Q And before that?</p> <p>23 A Hundreds.</p> <p style="text-align: right;">219</p>
<p>1 THE WITNESS: I told him as he entered the 2 room that he was here -- that we needed to discuss his 3 employment and that as he knows, an investigation was 4 done in regards to the complaint that he had been 5 sleeping on the job and I was here to share with him 6 the decision of that, as well as discuss his 7 employment.</p> <p>8 Q (BY MR. KILBORN:) You said all of that 9 before you introduced him?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: I introduced him to everyone 12 first. I told him we were here to discuss the decision 13 of him sleeping on the job. And then he was 14 introduced. He said he knew everyone except myself and 15 Scott.</p> <p>16 Q (BY MR. KILBORN:) I'm a little confused. 17 Did you introduce yourself and the other team members 18 who were there before you told him what was going to 19 happen?</p> <p>20 A Yes, I did.</p> <p>21 Q How many team members were there besides you?</p> <p>22 A The team rep, myself and Scott Gordy, the AM, 23 and Mr. Applegate.</p> <p style="text-align: right;">218</p>	<p>1 Q Hundreds.</p> <p>2 Five hundred?</p> <p>3 A Two hundred.</p> <p>4 Q Two hundred.</p> <p>5 So you were the expert on handling 6 terminations?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: I've had a lot of experience 9 handling terminations and exit interviews, yes.</p> <p>10 Q (BY MR. KILBORN:) And you told Mr. Dees what 11 you just told me?</p> <p>12 A Yes, sir.</p> <p>13 Q Mr. Dees, you've been under investigation for 14 sleeping on the job; is that right?</p> <p>15 A Yes, sir.</p> <p>16 Q And, Mr. Dees, the termination committee has 17 met, right?</p> <p>18 A Yes, sir.</p> <p>19 Q And they decided to terminate you?</p> <p>20 A Yes.</p> <p>21 Q And it's my job to carry it out?</p> <p>22 A That's correct.</p> <p>23 Q And then what did you tell him, give me all</p> <p style="text-align: right;">220</p>

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<p>1 the company property?</p> <p>2 A We have a list that we go over. His badge,</p> <p>3 he had his lockout/tagout. We go over a list of</p> <p>4 anything else that he might have. We also asked him if</p> <p>5 he had any personal property that we needed to collect</p> <p>6 for him. And then we discussed his -- if he had 401K.</p> <p>7 We discussed that COBRA coverage would be mailed to</p> <p>8 him. We wanted to confirm his address. We also talked</p> <p>9 about his health insurance, that it was good until the</p> <p>10 end of the month, that he could continue to use it.</p> <p>11 And then we asked him about his parking pass, if he had</p> <p>12 that in his vehicle, and that security would escort him</p> <p>13 out.</p> <p>14 Q When you talked about his personal property,</p> <p>15 did he say that he had some personal property that he</p> <p>16 needed to get?</p> <p>17 A I don't recall. I do know that, you know, in</p> <p>18 our conversation we always ask the team member is there</p> <p>19 anything -- since he hadn't gotten into work yet, he</p> <p>20 had his keys and his lunch and things along those</p> <p>21 lines, but if he had any other personal property, to,</p> <p>22 please, let us know and we gave him the number to</p> <p>23 contact the team rep. And then typically the team</p> <p style="text-align: right;">221</p>	<p>1 Q (BY MR. KILBORN:) So the employee who is</p> <p>2 getting fired or getting told that he's fired was not</p> <p>3 permitted to go to the locker and get his personal</p> <p>4 property?</p> <p>5 A That's right. Again, for security purposes.</p> <p>6 But anything that he would have asked us to retain or</p> <p>7 send to him, we would have done.</p> <p>8 Q If you did all of the talking and you had the</p> <p>9 experience of, say, several hundred firings, why was it</p> <p>10 necessary to have three other Hyundai executives in the</p> <p>11 room?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: They're not executives, but it</p> <p>14 was our policy. The assistant manager is with me to go</p> <p>15 over that information, the team rep is there for the</p> <p>16 team member and then the member of management is there</p> <p>17 because they want to reinforce the fact that they took</p> <p>18 part in helping, unfortunately, having to make that</p> <p>19 decision, that it wasn't just an arbitrary decision</p> <p>20 made by human resources. Again, it's our practice.</p> <p>21 Q (BY MR. KILBORN:) Did you tell him that you</p> <p>22 had taken the word of Brookshire over his word?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">223</p>
<p>1 relations rep will clean out the locker or the desk and</p> <p>2 anything that's personal would be packed up and mailed</p> <p>3 to the person, anything that's company property would</p> <p>4 be retained.</p> <p>5 Q So he told you that he had some property in</p> <p>6 his locker, didn't he?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: I don't recall, I'm sorry. I</p> <p>9 don't recall that he had told me that.</p> <p>10 Q (BY MR. KILBORN:) Did he have a locker?</p> <p>11 A He should have had a locker, yes.</p> <p>12 Q Does the locker have a lock on it?</p> <p>13 A Yeah.</p> <p>14 Q Does Hyundai have a key?</p> <p>15 A I would assume they do, yeah.</p> <p>16 Q Okay. Did HMMA go in his locker?</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 THE WITNESS: I don't know. I don't know if</p> <p>19 they did or not, but that's the normal practice, that</p> <p>20 they are supposed to go in and clean out the locker and</p> <p>21 then box up anything that's the individual's personal</p> <p>22 property, mail it to them and then retain anything</p> <p>23 that's the company's.</p> <p style="text-align: right;">222</p>	<p>1 THE WITNESS: He didn't ask.</p> <p>2 Q (BY MR. KILBORN:) Did you tell him?</p> <p>3 A Of course not, no.</p> <p>4 Q Did you say I'd like to personally hear your</p> <p>5 side of the story?</p> <p>6 A At that point in time, again, that is not the</p> <p>7 role -- that is not the purpose of that meeting, the</p> <p>8 decision has already been made.</p> <p>9 Q So there's nothing that can be done to</p> <p>10 reverse that at that time?</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 THE WITNESS: That's right. He can ask for a</p> <p>13 peer review and he did, but there's nothing from my</p> <p>14 perspective that I'm able -- certainly I'll listen, but</p> <p>15 the decision can't be changed at that point.</p> <p>16 Q (BY MR. KILBORN:) And you say there was a</p> <p>17 team rep there?</p> <p>18 A Yes, a team relations rep.</p> <p>19 Q And who was that?</p> <p>20 A I believe it was Lucas Coomer, but they have</p> <p>21 first shift and second shift reps there and they're</p> <p>22 always there to be with the team member as their</p> <p>23 advocate.</p> <p style="text-align: right;">224</p>

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<p>1 Q Advocate?</p> <p>2 A Yes, sir.</p> <p>3 Q What does advocate mean?</p> <p>4 A Advocate means that they are there if the</p> <p>5 team member has any further questions or needs any</p> <p>6 guidance, but as the manager of human resources, I am</p> <p>7 conducting the termination meeting. The team rep is</p> <p>8 there for really comfort for the individual.</p> <p>9 Q Comfort?</p> <p>10 A Uh-huh.</p> <p>11 Q Why would comfort be necessary?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: I think in any emotional</p> <p>14 situation like that, termination, that's severe for the</p> <p>15 person's psyche. It's important to have someone there</p> <p>16 that they know and that they feel that they can have</p> <p>17 someone there that will sit with them and talk with</p> <p>18 them about any issues or concern that they have.</p> <p>19 Q (BY MR. KILBORN:) So that's recognition as</p> <p>20 an extremely distressful and emotional, traumatic</p> <p>21 situation?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: For all terminations, yes.</p> <p style="text-align: right;">225</p>	<p>1 THE WITNESS: Advocate for the team member.</p> <p>2 We do it in all of them.</p> <p>3 Q (BY MR. KILBORN:) If the decision was -- had</p> <p>4 been made and there's nothing that could be said or</p> <p>5 done, what's the good of having an advocate there?</p> <p>6 A I think -- As I said, it's our policy, it's</p> <p>7 our practice, it's our procedure. That's the role of</p> <p>8 our team relations group, to be an advocate for the</p> <p>9 team.</p> <p>10 Q I know, but if the decision has already been</p> <p>11 made and it's irrevocable at that time, why is the</p> <p>12 advocate there to advocate his position?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: Not to advocate the position,</p> <p>15 but to be there for the individual. That's our</p> <p>16 process.</p> <p>17 Q (BY MR. KILBORN:) Sort of a company</p> <p>18 psychologist, counselor?</p> <p>19 BY MR. SCOFIELD: Object to the form.</p> <p>20 THE WITNESS: As I said, the team rep is in</p> <p>21 the role of the advocate of the team member and they</p> <p>22 work out on the floor with them. Even though they're</p> <p>23 human resources, they're with the individuals</p> <p style="text-align: right;">227</p>
<p>1 Q (BY MR. KILBORN:) And particularly in this</p> <p>2 case for Mr. Dees?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: I think any. It's always a</p> <p>5 very stressful situation for the person that's having</p> <p>6 to deliver it as well as for the person being</p> <p>7 terminated.</p> <p>8 Q (BY MR. KILBORN:) Well, let's just talk</p> <p>9 about Mr. Dees. It was particularly stressful for</p> <p>10 Mr. Dees, wasn't it?</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 THE WITNESS: He was distressed. He was very</p> <p>13 professional, but he was noticeably upset and surprised</p> <p>14 and was concerned and asked again what he could do to</p> <p>15 change or alter that decision, but, yes, he was visibly</p> <p>16 upset.</p> <p>17 Q (BY MR. KILBORN:) And how did you know that</p> <p>18 he was visibly upset?</p> <p>19 A His face became red, he tensed up, just his</p> <p>20 body language.</p> <p>21 Q And so the team rep was there to, as you</p> <p>22 phrased it, comfort him?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">226</p>	<p>1 day-to-day, so they have a much closer working</p> <p>2 relationship than other members of HR.</p> <p>3 Q (BY MR. KILBORN:) So HR leads the person to</p> <p>4 be fired to believe that this is an advocate, but</p> <p>5 that's a fraud, isn't it, because nothing can be done</p> <p>6 and there's no advocacy that will be heard; isn't that</p> <p>7 true?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 You can answer if you know.</p> <p>10 THE WITNESS: Maybe it's not clear what the</p> <p>11 advocate means, but the person that is the team</p> <p>12 relations rep works on the floor, knows the team</p> <p>13 members, works with them on a daily basis. We are more</p> <p>14 removed with three thousand people to not know them as</p> <p>15 intimately as the team rep would.</p> <p>16 Q (BY MR. KILBORN:) But advocate means</p> <p>17 somebody to basically advocate the position of the</p> <p>18 person that is being terminated if he thinks that he's</p> <p>19 being wrongfully terminated, isn't it?</p> <p>20 BY MR. SCOFIELD: Object to the form.</p> <p>21 THE WITNESS: That may be how you define it,</p> <p>22 but in our realm, that's the role of our team relations</p> <p>23 person.</p> <p style="text-align: right;">228</p>

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<p>1 Q (BY MR. KILBORN:) So are they called</p> <p>2 advocates?</p> <p>3 A They're called a team relations</p> <p>4 representative.</p> <p>5 Q Well, where did you get this term advocate?</p> <p>6 A That's my term of how, you know, the person's</p> <p>7 role is.</p> <p>8 Q And this was a clear surprise to Mr. Dees?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: He said he knew about the</p> <p>11 investigation, but he did not know that this was the</p> <p>12 day that the decision was made, yes.</p> <p>13 Q (BY MR. KILBORN:) And he said, I think you</p> <p>14 said, what can I do?</p> <p>15 A Uh-huh.</p> <p>16 Q All right. And you said nothing?</p> <p>17 A I said that the decision was made but that he</p> <p>18 could contact team relations for a peer review and the</p> <p>19 team relations rep would give him the information as to</p> <p>20 who to contact for that.</p> <p>21 Q Well, did he attempt to find out why the</p> <p>22 decision had been made?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">229</p>	<p>1 Reservist had to present to HMMA to go to monthly</p> <p>2 drill?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: I do know we have a policy</p> <p>5 pertaining to that and I do know that there's a form</p> <p>6 that the person has to fill out for it to be entered</p> <p>7 into payroll because we do pay the individual the</p> <p>8 difference between the rate that they receive in the</p> <p>9 military versus the pay and so we do reimburse them for</p> <p>10 that. I believe the orders are requested, but I do</p> <p>11 know now that you can also have just a verbal request</p> <p>12 to allow that person to be off.</p> <p>13 Q (BY MR. KILBORN:) Now, when did that policy,</p> <p>14 that a verbal request would be sufficient over written</p> <p>15 orders, take place?</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 THE WITNESS: I think it was always there. I</p> <p>18 think it was just confusing for our supervisors. Maybe</p> <p>19 it wasn't clear at one point in time.</p> <p>20 Q (BY MR. KILBORN:) And did that confusion</p> <p>21 come about because of this case?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: No, I don't think so.</p> <p style="text-align: right;">231</p>
<p>1 THE WITNESS: No, he did not. He seemed that</p> <p>2 he was finished with the conversation. He got up and</p> <p>3 walked out.</p> <p>4 Q (BY MR. KILBORN:) So based on all of your</p> <p>5 information, you did not know that Mr. Dees had any</p> <p>6 military obligation whatsoever?</p> <p>7 A No, sir.</p> <p>8 Q All right. And all of the information that</p> <p>9 you got, including what was discussed at this</p> <p>10 termination committee meeting, the subject of Mr. Dees'</p> <p>11 National Guard obligation was never discussed?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: Not with me, no.</p> <p>14 Q (BY MR. KILBORN:) There are references in</p> <p>15 the file to Mr. Dees' National Guard duty and I'm</p> <p>16 wondering why that wasn't discussed?</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 THE WITNESS: As I said, the team relations</p> <p>19 would have done the investigation. And that's what we</p> <p>20 would have discussed, was the serious misconduct in</p> <p>21 that particular meeting.</p> <p>22 Q (BY MR. KILBORN:) What was HMMA's policy</p> <p>23 regarding what type of documentation a National Guard</p> <p style="text-align: right;">230</p>	<p>1 Q (BY MR. KILBORN:) When did it come about?</p> <p>2 A I don't recall, but as I said, the whole area</p> <p>3 of that responsibility is in team relations, but I know</p> <p>4 that we have had conversations about what the procedure</p> <p>5 is and how that's followed.</p> <p>6 Q When did you have those?</p> <p>7 A I don't recall, I just know that it's back</p> <p>8 here in my head.</p> <p>9 Q What month?</p> <p>10 A I don't know.</p> <p>11 Q Was it in 2007?</p> <p>12 A I really -- I honestly don't recall. I'd be</p> <p>13 guessing.</p> <p>14 Q Is that change documented anywhere?</p> <p>15 A I don't think so. I think the policy is the</p> <p>16 same. I think it was just communication with our group</p> <p>17 leaders and supervisors as to what was the proper</p> <p>18 methodology with that.</p> <p>19 Q Did you conduct that?</p> <p>20 A No.</p> <p>21 Q Did you participate?</p> <p>22 A No, we have HR managers meetings and it was</p> <p>23 just reported in one of our managers meetings, so</p> <p style="text-align: right;">232</p>

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<p>1 that's why it rings a bell.</p> <p>2 Q To you?</p> <p>3 A To Mr. Ryu.</p> <p>4 Q Mr. Ryu?</p> <p>5 A Yeah. He has weekly meetings with all of the</p> <p>6 HR managers.</p> <p>7 Q So how did you find out that it had been</p> <p>8 reported to Mr. Ryu that there was some confusion among</p> <p>9 the managers about what type of documentation was</p> <p>10 needed for a National Guard Reservist to go to drill on</p> <p>11 a weekend?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: It came through our team</p> <p>14 relations group.</p> <p>15 Q (BY MR. KILBORN:) Team relations group, who</p> <p>16 is that?</p> <p>17 A It's Auddie Swagman, our manager for team</p> <p>18 relations.</p> <p>19 Q Who told you?</p> <p>20 A He made mention of it in our managers</p> <p>21 meeting.</p> <p>22 Q So it's always been the policy of HMMA that</p> <p>23 verbal communication about National Guard weekend drill</p> <p style="text-align: right;">233</p>	<p>1 Q So was it confusion among all of them?</p> <p>2 BY MR. SCOFIELD: Object to the form.</p> <p>3 THE WITNESS: Not that I'm aware of, but we</p> <p>4 were as always trying to make sure that we're</p> <p>5 consistent with all of our policies and procedures and</p> <p>6 that had come up as an inconsistency.</p> <p>7 Q (BY MR. KILBORN:) And who was Dees' group</p> <p>8 leader?</p> <p>9 A I'm sorry, I don't know. I know who his</p> <p>10 assistant manager is, but I don't know -- I don't think</p> <p>11 he has one. I think in that group it goes to an</p> <p>12 assistant manager. Some areas don't have them because</p> <p>13 they're smaller. I think he just has an assistant</p> <p>14 manager.</p> <p>15 Q If I wanted to look at documentation for some</p> <p>16 written evidence as to when this issue came up, what</p> <p>17 evidence would there be?</p> <p>18 BY MR. SCOFIELD: Object to the form.</p> <p>19 THE WITNESS: I'm sorry, I don't know.</p> <p>20 Q (BY MR. KILBORN:) Was it before or after</p> <p>21 Dees was terminated?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: I honestly can't recall.</p> <p style="text-align: right;">235</p>
<p>1 is sufficient?</p> <p>2 BY MR. SCOFIELD: Object to the form.</p> <p>3 THE WITNESS: That's my understanding, yes.</p> <p>4 Q (BY MR. KILBORN:) And that written orders</p> <p>5 are not necessary?</p> <p>6 A Yes, sir.</p> <p>7 Q Then you found out that there was some</p> <p>8 confusion about that?</p> <p>9 A We have group leaders that are first line</p> <p>10 supervisors out in the plant and I believe they thought</p> <p>11 that that was a requirement, so it required some</p> <p>12 additional education of our group leaders to make sure</p> <p>13 that they enforced the procedure correctly.</p> <p>14 Q So the managers thought orders were the</p> <p>15 problems?</p> <p>16 A Group leaders.</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 Q (BY MR. KILBORN:) Group leaders?</p> <p>19 A I believe there were a few instances.</p> <p>20 Q Which group leaders thought that?</p> <p>21 A I couldn't tell you.</p> <p>22 Q Well, how many group leaders would there be?</p> <p>23 A About a hundred and forty.</p> <p style="text-align: right;">234</p>	<p>1 Q (BY MR. KILBORN:) Who would be the person</p> <p>2 most knowledgeable of that confusion and how it was</p> <p>3 corrected?</p> <p>4 A Our team relations manager or one of the</p> <p>5 assistant managers in team relations.</p> <p>6 Q Who would that be?</p> <p>7 A Rob Clevenger.</p> <p>8 Q I believe his name is in the file, isn't it?</p> <p>9 A Yes, sir.</p> <p>10 BY MR. SPORT: Yeah, it's in there.</p> <p>11 Q (BY MR. KILBORN:) And Rob Clevenger would be</p> <p>12 the same Rob Clevenger that wrote the memo which is</p> <p>13 Bates Number 33 in Exhibit 9 dated February 23, 2007?</p> <p>14 A Yes.</p> <p>15 Q So he would be the person in charge of</p> <p>16 straightening out the confusion?</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 THE WITNESS: He would have called the</p> <p>19 attention to the fact that there was some confusion and</p> <p>20 we would have asked for clarity on that particular</p> <p>21 piece, but, yes, he would have been the individual.</p> <p>22 Q (BY MR. KILBORN:) Well, I notice that it</p> <p>23 looks like there are quite a few forms and documents</p> <p style="text-align: right;">236</p>

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<p>1 that HMMA followed. Do you think that that</p> <p>2 clarification of such an important matter would be put</p> <p>3 in writing?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: It's possible, but as I said,</p> <p>6 it's not under my supervision, so I don't really know</p> <p>7 how they follow that procedure.</p> <p>8 Q (BY MR. KILBORN:) In your position, is it</p> <p>9 important for you to know what the procedures or rules</p> <p>10 of HMMA are with regard to what's required for a</p> <p>11 National Guard Reservist to not be punished for</p> <p>12 attending military duties?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: Again, the overseer of the</p> <p>15 policies and procedures would be team relations. In</p> <p>16 the employment section, we do have particular policies</p> <p>17 and procedures pertaining to employment matters, but in</p> <p>18 that regard, that would have been handled by team</p> <p>19 relations.</p> <p>20 BY MR. KILBORN: We would like to request,</p> <p>21 and we'll put it in a letter, any documentation</p> <p>22 regarding this confusion about what type of</p> <p>23 documentation is required and any straightening out of</p> <p style="text-align: right;">237</p>	<p>1 A I think maybe when I -- I'd be guessing.</p> <p>2 BY MR. SCOFIELD: Don't guess.</p> <p>3 THE WITNESS: I'd be guessing. Honestly, I</p> <p>4 don't recall.</p> <p>5 Q (BY MR. KILBORN:) Well, I don't want you to</p> <p>6 guess, but if you have a best judgment about it, I'd</p> <p>7 like that.</p> <p>8 A It would have been when I received the</p> <p>9 notification to review that declaration.</p> <p>10 Q Outside of a discussion with HMMA's lawyers,</p> <p>11 have you discussed the matters involved in this case</p> <p>12 with any other person?</p> <p>13 BY MR. SCOFIELD: Object to the form.</p> <p>14 THE WITNESS: No.</p> <p>15 Q (BY MR. KILBORN:) Not with Mr. Ryu?</p> <p>16 A Huh-uh. Sorry, no.</p> <p>17 Q So after Mr. Dees was informed that it had</p> <p>18 already been decided to be terminated and he asked</p> <p>19 anything I could do, did any of the other team members</p> <p>20 or Hyundai employees in the room say anything?</p> <p>21 A They all felt badly for the individual, that</p> <p>22 he was a good maintenance team member, and they felt</p> <p>23 badly of the choices that he had made. And as I said,</p> <p style="text-align: right;">239</p>
<p>1 the confusion by anybody, including Mr. Clevenger.</p> <p>2 Q (BY MR. KILBORN:) You probably told me, and</p> <p>3 I apologize for repeating myself if you did, how did</p> <p>4 this come to your attention?</p> <p>5 A We were in a human resources managers meeting</p> <p>6 and it was reported by one of our managers in our</p> <p>7 weekly meeting.</p> <p>8 Q But you don't remember who?</p> <p>9 A As I said, it was a team relations member of</p> <p>10 management, but I don't know exactly who it was. It</p> <p>11 could have either been Rob or Auddie.</p> <p>12 Q Had that issue come about with regard to</p> <p>13 other employees?</p> <p>14 A Not that I'm aware of, just basically</p> <p>15 notification of reinforcing the current policy and</p> <p>16 making sure that our group leaders were aware of how to</p> <p>17 practice that policy.</p> <p>18 Q That was done by, you think, Mr. Clevenger?</p> <p>19 A I know that he would have had some</p> <p>20 responsibility for that, but I'm not sure if that was</p> <p>21 reported by Auddie or by Rob.</p> <p>22 Q Do you recall when and how you found out</p> <p>23 about this particular lawsuit?</p> <p style="text-align: right;">238</p>	<p>1 we take our terminations very seriously. We always</p> <p>2 feel badly when someone is not successful with our</p> <p>3 company. We did feel badly about the whole situation,</p> <p>4 but unfortunately it was the right decision to make.</p> <p>5 Q What did Dees do, just sort of sit there in</p> <p>6 the chair stunned?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: He got up and walked out after</p> <p>9 we had our discussion and security took him to his</p> <p>10 vehicle and picked up his parking pass.</p> <p>11 Q (BY MR. KILBORN:) He was escorted to his</p> <p>12 vehicle?</p> <p>13 A Yes, sir.</p> <p>14 Q And escorted off the property?</p> <p>15 A He would have driven off the property</p> <p>16 himself.</p> <p>17 Q What did you do to make sure that his</p> <p>18 personal property in his locker was delivered back to</p> <p>19 him?</p> <p>20 A We instructed the team rep to go back to the</p> <p>21 locker, to pull all the personal property out, box it</p> <p>22 and mail it to the individual.</p> <p>23 Q And who did you instruct to do that?</p> <p style="text-align: right;">240</p>

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<p>1 A That would be Lucas Coomer.</p> <p>2 Q That's C-U-M-E-R?</p> <p>3 A C-O-O-M-E-R.</p> <p>4 Q So do you think Mr. Dees took this pretty</p> <p>5 hard?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: I think he was distraught as</p> <p>8 most people are when they lose their job, yes.</p> <p>9 Q (BY MR. KILBORN:) But he was particularly</p> <p>10 distraught because of the surprise?</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 THE WITNESS: Not any more than anyone else</p> <p>13 that I've met. Not any less, not any more.</p> <p>14 Q (BY MR. KILBORN:) You said his face turned</p> <p>15 color?</p> <p>16 A Yes.</p> <p>17 Q Red?</p> <p>18 A Yes.</p> <p>19 Q Then you wrote him the letter, Bates Number</p> <p>20 1. That's just a form letter I think you said?</p> <p>21 A The March 7th one about the peer review?</p> <p>22 Q Right.</p> <p>23 A Yes.</p> <p style="text-align: right;">241</p>	<p>1 throw the team wear in the trash, sometimes people do</p> <p>2 still wear them and we want the insignia and the name</p> <p>3 cut out so that no one else would wear the team wear.</p> <p>4 That requested that he do that. And our handbook, we</p> <p>5 also said it's not mandatory for you to return it but</p> <p>6 to just destroy it if you have it at home.</p> <p>7 Q Was the date of this termination meeting</p> <p>8 you've described the date on document Bates Number 5,</p> <p>9 2-26-07?</p> <p>10 A Yes.</p> <p>11 Q And that was the first date Mr. Dees had any</p> <p>12 notice that HMMA decided to terminate him?</p> <p>13 A Yes, sir.</p> <p>14 Q And you always do that in person because of</p> <p>15 respect and dignity?</p> <p>16 A We do it in person unless the person was no</p> <p>17 call, no show and hadn't come back at all.</p> <p>18 Q Take a look at Bates Number 6, a letter</p> <p>19 signed by you on February 26th, 2007 --</p> <p>20 A Yes.</p> <p>21 Q -- to Mr. Dees. That's the same day as the</p> <p>22 termination?</p> <p>23 A Yes.</p> <p style="text-align: right;">243</p>
<p>1 Q So you're telling him he must meet with</p> <p>2 Rob Clevenger?</p> <p>3 A Yes.</p> <p>4 Q So that was mandatory?</p> <p>5 A That's part of the peer-review process, yes.</p> <p>6 Q Take a look at Bates Number 5 in that same</p> <p>7 exhibit. It's called an exit checklist.</p> <p>8 A Yes, sir.</p> <p>9 Q Did you fill that out in the termination</p> <p>10 room?</p> <p>11 A Scott Gordy did, see the signature down</p> <p>12 there, my assistant manager.</p> <p>13 Q So that was handed to Mr. Dees to sign?</p> <p>14 A Yes, after we went over all of the company</p> <p>15 property that was returned and the information on the</p> <p>16 paycheck and vacation, that he is not obligated to</p> <p>17 sign, but if he wanted to, he could. These were the</p> <p>18 things that he did return. And he said he did not want</p> <p>19 to sign it. And I said that was fine.</p> <p>20 Q You got the word destroy it looks like to the</p> <p>21 right. What does that mean?</p> <p>22 A The team member does not have to return his</p> <p>23 uniforms, but we have had situations that if people</p> <p style="text-align: right;">242</p>	<p>1 Q Did you mail that letter?</p> <p>2 A No, I read it to him and gave him a copy.</p> <p>3 Q So this letter had already been typed and</p> <p>4 signed?</p> <p>5 A Yes.</p> <p>6 Q Wasn't anything that the advocate could do to</p> <p>7 change that, was there?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: No, sir.</p> <p>10 Q (BY MR. KILBORN:) Is this just a form</p> <p>11 letter?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: It's not a form letter, I mean,</p> <p>14 it's the same information, but the date and the reason</p> <p>15 that the person is being terminated is changed, but the</p> <p>16 basic content is the same, yes.</p> <p>17 Q (BY MR. KILBORN:) Are the facts stated in</p> <p>18 this letter of February 26th, 2007, Bates Number 6,</p> <p>19 accurate?</p> <p>20 A Yes.</p> <p>21 Q You say in the first sentence: It has been</p> <p>22 brought to my attention on February 14th, 2007 that you</p> <p>23 were found by a member of HMMA management in the third</p> <p style="text-align: right;">244</p>

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<p>1 floor overhead sleeping.</p> <p>2 A Yes.</p> <p>3 Q And is the February 14th date the date that</p> <p>4 it was brought to your attention?</p> <p>5 A That was the date that it occurred.</p> <p>6 Q Is he given anything else besides this</p> <p>7 letter?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: No, sir.</p> <p>10 Q (BY MR. KILBORN:) Well, how did the meeting</p> <p>11 end?</p> <p>12 A He got up and walked out.</p> <p>13 Q What did you say, have a good day or have a</p> <p>14 good life or what?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: I opened the door for him and I</p> <p>17 said that security would escort him out and if he had</p> <p>18 any further questions to, please, feel free to contact</p> <p>19 me.</p> <p>20 Q (BY MR. KILBORN:) Have you ever had anybody</p> <p>21 in your family in the military?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: Yes.</p> <p style="text-align: right;">245</p>	<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 Q (BY MR. KILBORN:) -- and willful?</p> <p>3 BY MR. SCOFIELD: Same objection.</p> <p>4 THE WITNESS: Poor decision on his part</p> <p>5 unfortunately. We all make them. Unfortunately he</p> <p>6 did.</p> <p>7 Q (BY MR. KILBORN:) And you've never made any</p> <p>8 poor decisions yourself?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: I certainly have.</p> <p>11 Q (BY MR. KILBORN:) Have you ever been fired?</p> <p>12 A No, sir.</p> <p>13 Q So you've been on the giving end but not the</p> <p>14 receiving end?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 Q (BY MR. KILBORN:) Is that correct?</p> <p>17 A Yes.</p> <p>18 Q Well, where were the Koreans when all of this</p> <p>19 termination is going on? Any expats in the room?</p> <p>20 A No, sir.</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 Q (BY MR. KILBORN:) Any expats know about it?</p> <p>23 A After the decision was made, I did discuss it</p> <p style="text-align: right;">247</p>
<p>1 Q (BY MR. KILBORN:) Who?</p> <p>2 A My nephew is a Marine.</p> <p>3 Q Reserve?</p> <p>4 A Yes.</p> <p>5 Q National Guard?</p> <p>6 A Yes. I think he is.</p> <p>7 Q Who does he work for?</p> <p>8 A He is a deputy sheriff in Ohio.</p> <p>9 Q In Hawaii?</p> <p>10 A Ohio. I wish Hawaii, I'd rather go to Hawaii</p> <p>11 than Ohio to visit him.</p> <p>12 Q Amen.</p> <p>13 Combat experience?</p> <p>14 A He's had a lot of experience. No, he hasn't</p> <p>15 been outside of the states yet. They keep saying he's</p> <p>16 going to be called up, but he hasn't yet.</p> <p>17 Q And why would you think that a man who would</p> <p>18 sleep with a pillow behind his head in a sneaky</p> <p>19 position on the third floor, his character is that he</p> <p>20 is an honorable soldier with combat duties, with men's</p> <p>21 life under him on the commander security detail, why</p> <p>22 would you think a gentleman of that character would do</p> <p>23 something so stupid --</p> <p style="text-align: right;">246</p>	<p>1 with my supervisor, Mr. Ryu, and the HR coordinator to</p> <p>2 make them aware of the decision.</p> <p>3 Q Did you tell him why?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 Q (BY MR. KILBORN:) Did Mr. Ryu know that</p> <p>7 Mr. Dees had military obligations while working at</p> <p>8 HMMA?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: No.</p> <p>11 Q (BY MR. KILBORN:) No?</p> <p>12 A He did not.</p> <p>13 Q There are various it looks like pages in</p> <p>14 these documents, like Bates Number 18 called receipt of</p> <p>15 handbook acknowledgment --</p> <p>16 A Uh-huh.</p> <p>17 Q -- why are these pages in here?</p> <p>18 BY MR. SCOFIELD: Object to the form.</p> <p>19 THE WITNESS: It's part of the personnel</p> <p>20 file. Once the person gets the handbook, this is an</p> <p>21 acknowledgment. It's in the back of the handbook that</p> <p>22 they sign it at orientation that they received the</p> <p>23 handbook and then we keep that in the personnel file.</p> <p style="text-align: right;">248</p>

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<p>1 Q (BY MR. KILBORN:) And if you look at Bates 2 Number 19, that's that same grant of license and 3 release of claim that you signed -- 4 A Yes, sir. 5 Q -- that we talk about before? 6 A Uh-huh. 7 Q You got Dees to sign something that says: I, 8 meaning Dees, fully understand and agree. And it goes 9 on about the furthering of the business interest of 10 Hyundai Motor Manufacturing Alabama, L.L.C., Hyundai 11 Motor America, Inc. and Hyundai Motor Company. 12 Mr. Dees wouldn't have any clue about what the business 13 interest of those companies were, would he? 14 BY MR. SCOFIELD: Object to the form. 15 THE WITNESS: I would not think so. 16 Q (BY MR. KILBORN:) No. What you have him do 17 is sign something that says he fully understands about 18 the business interest of those three companies and you 19 particularly and everybody at HMMA knows that's not 20 true, don't they? 21 BY MR. SCOFIELD: Object to the form. 22 THE WITNESS: As I said, it's part of our 23 procedure that we do have all of our team members</p> <p style="text-align: right;">249</p>	<p>1 BY MR. SCOFIELD: Object to the form. 2 THE WITNESS: I couldn't say what each team 3 member understands. I do know that each form is 4 explained to them in orientation. They do see a video 5 about Hyundai. I couldn't say whether he understood it 6 or didn't understand it. 7 Q (BY MR. KILBORN:) Well, it says fully 8 understand, doesn't it? 9 A That was his choice to sign it and he could 10 have asked questions, but I was not there when he did 11 sign this form. 12 Q Well, you know he didn't fully understand it, 13 don't you? 14 BY MR. SCOFIELD: Object to the form. 15 THE WITNESS: I can't say what he thought or 16 didn't think at that time. 17 Q (BY MR. KILBORN:) Well, you didn't fully 18 understand it when you signed it, did you? 19 BY MR. SCOFIELD: Object to the form. 20 THE WITNESS: I understood that it was for an 21 advertisement, yes. 22 Q (BY MR. KILBORN:) But you didn't fully 23 understand what the business interest of those three</p> <p style="text-align: right;">251</p>
<p>1 complete this in case we do want to do any kind of 2 publicity, media, commercials, prints that we do have 3 this release. 4 Q (BY MR. KILBORN:) But you've got everybody 5 signing that they fully understand the business 6 interests of these three companies knowing that they 7 don't have a clue what they are; isn't that true? 8 BY MR. SCOFIELD: Object to the form. 9 THE WITNESS: As I said, it is a form that 10 all of our team members do complete. 11 Q (BY MR. KILBORN:) I know it's a form, 12 Ms. Warner. I'm trying to get past that. 13 A Yes, sir. 14 Q Isn't it true that this form that you always 15 use has the employee -- the new employee agree that he 16 fully understands the business interests of three 17 companies, one of whom is headquartered in Seoul, South 18 Korea, and you know, in fact, that that's not true? 19 BY MR. SCOFIELD: Object to the form. 20 THE WITNESS: They're not in Seoul, South 21 Korea? 22 Q (BY MR. KILBORN:) They don't fully 23 understand any of that, do they?</p> <p style="text-align: right;">250</p>	<p>1 companies were, did you? 2 BY MR. SCOFIELD: Object to the form. 3 THE WITNESS: As I said, I knew what the 4 purpose of the form was. 5 Q (BY MR. KILBORN:) I didn't ask you that. 6 You knew -- You didn't have a clue what the business 7 interest of those three companies were, did you? 8 BY MR. SCOFIELD: Object to the form. 9 THE WITNESS: I believe that I do understand 10 what the form was and why I signed it. 11 Q (BY MR. KILBORN:) So you're going to tell 12 the jury that tries this case that you fully understood 13 that when you signed it? 14 BY MR. SCOFIELD: Object to the form. 15 THE WITNESS: Yes. 16 Q (BY MR. KILBORN:) Are you going to tell them 17 that Dees fully understood it when he signed it? 18 BY MR. SCOFIELD: Object to the form. 19 THE WITNESS: I can't speak for him, I can 20 speak for myself. 21 Q (BY MR. KILBORN:) And you would stand on 22 that answer if I asked you that in front of a jury? 23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">252</p>

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<p>1 THE WITNESS: Yes, sir.</p> <p>2 Q (BY MR. KILBORN:) Take a look at page number</p> <p>3 26. That's called application notification release of</p> <p>4 information.</p> <p>5 BY MR. SCOFIELD: Vince, would you repeat the</p> <p>6 Bates Number?</p> <p>7 BY MR. KILBORN: Yeah, it's 26.</p> <p>8 BY MR. SCOFIELD: Thank you.</p> <p>9 Q (BY MR. KILBORN:) In the fine print down at</p> <p>10 the bottom, there's an asterisk. It says: HMMA fully</p> <p>11 complies with the spirit and intent of laws regarding</p> <p>12 nondiscrimination for employment because of sex, race</p> <p>13 creed, color, national origin, age, disability or</p> <p>14 Vietnam veteran status. Do you see that?</p> <p>15 A Uh-huh.</p> <p>16 Q And this form was signed by Mr. Dees in what,</p> <p>17 August 26, 2005?</p> <p>18 A Yes.</p> <p>19 Q And was that the company policy at that time?</p> <p>20 A Yes. It's in order to be able to do a</p> <p>21 background check on the individual.</p> <p>22 Q Where is the reference to USERRA in that</p> <p>23 company compliance policy on the bottom of your form?</p> <p style="text-align: right;">253</p>	<p>1 BY MR. KILBORN: It certainly does.</p> <p>2 Q (BY MR. KILBORN:) I'm asking you: Where is</p> <p>3 the reference to USERRA? And if you don't see any, why</p> <p>4 is there no reference to USERRA?</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 THE WITNESS: Is that a requirement? Is that</p> <p>7 a law?</p> <p>8 Q (BY MR. KILBORN:) Answer the question.</p> <p>9 BY MR. SCOFIELD: Just answer the question to</p> <p>10 the best of your ability.</p> <p>11 THE WITNESS: All right. It's not there.</p> <p>12 Q (BY MR. KILBORN:) And why isn't it there?</p> <p>13 A Because based on our legal review of all of</p> <p>14 these forms, it has not been stated as a requirement to</p> <p>15 this.</p> <p>16 Q This form doesn't even recognize the</p> <p>17 existence of USERRA, does it?</p> <p>18 A Does not.</p> <p>19 Q It does recognize the existence of some</p> <p>20 Vietnam veteran status, doesn't it?</p> <p>21 A Yes.</p> <p>22 Q What is that?</p> <p>23 A The Vietnam veteran status?</p> <p style="text-align: right;">255</p>
<p>1 A As I said, this is a background check that is</p> <p>2 used.</p> <p>3 Q I didn't ask you that. You told me that and</p> <p>4 I believed you.</p> <p>5 Where is the company policy in this form in</p> <p>6 2005 regarding USERRA?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: This form is utilized to do a</p> <p>9 background check. We put that on the application, but</p> <p>10 this is just a form for a background.</p> <p>11 Q (BY MR. KILBORN:) Just a form.</p> <p>12 Well, where is the reference to USERRA since</p> <p>13 you mentioned race, creed, sex, color, national origin,</p> <p>14 age, disability, Vietnam veteran status? Where is</p> <p>15 USERRA?</p> <p>16 A All of our forms are reviewed by legal and</p> <p>17 this is the phrases and information that have been</p> <p>18 recommended that we use for our company.</p> <p>19 BY MR. KILBORN: Would you instruct her to</p> <p>20 answer my question?</p> <p>21 BY MR. SCOFIELD: I think she's doing the</p> <p>22 best to answer it. I respond, Vince, that the document</p> <p>23 speaks for itself.</p> <p style="text-align: right;">254</p>	<p>1 Q Yes.</p> <p>2 A This information and phrase was put on this</p> <p>3 form by our legal counsel.</p> <p>4 Q Well, what is it since you're an employment</p> <p>5 specialist?</p> <p>6 BY MR. SCOFIELD: Object to the form.</p> <p>7 THE WITNESS: What is a Vietnam veteran</p> <p>8 status?</p> <p>9 Q (BY MR. KILBORN:) Right.</p> <p>10 A In terms of nondiscrimination, that is an</p> <p>11 area that we do not discriminate against.</p> <p>12 Q What happened to World War II, the first Iraq</p> <p>13 War and the Korean War?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: Again, this is a phrase that</p> <p>16 was put on by our legal counsel and I defer to them for</p> <p>17 the correct verbiage on all these forms.</p> <p>18 Q (BY MR. KILBORN:) But you're an employment</p> <p>19 specialist in particular and you're in charge of making</p> <p>20 sure that there's no discrimination in employment for</p> <p>21 various protective classes, right?</p> <p>22 A Uh-huh.</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">256</p>

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<p>1 Q (BY MR. KILBORN:) And National Guard is a 2 protective class, right? 3 BY MR. SCOFIELD: Object to the form. 4 THE WITNESS: Not that I'm aware of, no. 5 Q (BY MR. KILBORN:) Okay. What class does 6 USERRA protect? 7 A It protects all of the military, anyone that 8 needs to serve. 9 Q Isn't National Guard military? 10 A Certainly. 11 Q Well, what law on this form did Hyundai have 12 Dees sign that references the protection of a National 13 Guard Reservist? 14 A This form isn't used for that, it's used to 15 do background checks. 16 Q But where on this form is that noted? 17 BY MR. SCOFIELD: Object to the form. 18 THE WITNESS: This is a phrase that was put 19 on by our legal counsel, so I can't answer that for 20 you. 21 Q (BY MR. KILBORN:) As a matter of fact, there 22 is no such thing as a Vietnam veteran status law, is 23 there?</p> <p style="text-align: right;">257</p>	<p>1 Q And you're responsible for the content of 2 these forms, aren't you? 3 A Yes, I am. 4 Q As a matter of fact, Dees isn't the first one 5 or the last one to sign this form, is he? 6 A I would think not. 7 Q And this is supposed to notify the person 8 signing it like Dees, the applicant, as to what Hyundai 9 complies -- I mean, HMMA fully complies with, isn't it? 10 BY MR. SCOFIELD: Object to the form. 11 THE WITNESS: It's a form used to gather 12 information for background checks. 13 Q (BY MR. KILBORN:) And, obviously, the legal 14 counsel that drew up this form didn't know what he was 15 talking about, did he? 16 BY MR. SCOFIELD: Object to the form. 17 THE WITNESS: I'm not a lawyer, I can't say. 18 Q (BY MR. KILBORN:) Well, he cited some law 19 that doesn't exist, didn't he? 20 BY MR. SCOFIELD: Object to the form. 21 THE WITNESS: As I said, that was the phrase 22 that was asked to be put on by our legal counsel. 23 Q (BY MR. KILBORN:) But you don't -- Have you</p> <p style="text-align: right;">259</p>
<p>1 A No. 2 BY MR. SCOFIELD: Object to the form. 3 Q (BY MR. KILBORN:) That's just some poppycock 4 that somebody put in that form, isn't it? 5 BY MR. SCOFIELD: Same objection. 6 THE WITNESS: Again, that information was put 7 on by our legal counsel. 8 Q (BY MR. KILBORN:) But you review it, don't 9 you? 10 BY MR. SCOFIELD: Object to the form. 11 THE WITNESS: Sure. 12 Q (BY MR. KILBORN:) And you're in charge of 13 having people sign it, aren't you? 14 A For background checks, yes. 15 Q So what y'all did was y'all made up some 16 bogus law that doesn't exist and gave it a bogus name 17 called Vietnam veteran status and stuck it on a form, 18 didn't you? 19 BY MR. SCOFIELD: Object to the form. 20 THE WITNESS: I personally did not, no. 21 Q (BY MR. KILBORN:) No, but you oversaw it, 22 didn't you? 23 A It is on there.</p> <p style="text-align: right;">258</p>	<p>1 ever heard -- Well, let me ask you this: Does legal 2 counsel at HMMA make a practice of inventing the names 3 of laws that do not exist? 4 BY MR. SCOFIELD: Object to the form. 5 THE WITNESS: I can't answer that for you. I 6 don't know. 7 Q (BY MR. KILBORN:) Have you heard of any 8 other ones other than this one? 9 BY MR. SCOFIELD: Object to the form. 10 THE WITNESS: Of what? 11 Q (BY MR. KILBORN:) Any other laws that -- 12 bogus names of laws that the legal counsel invented? 13 BY MR. SCOFIELD: Object to the form. 14 THE WITNESS: I'm sorry, I don't understand 15 your question. 16 Q (BY MR. KILBORN:) It looks like to me, and 17 maybe I'm a fool, but it looks like to me that somebody 18 invented a law that doesn't exist and stuck it on this 19 form, would you agree to that? 20 BY MR. SCOFIELD: Object to the form. 21 THE WITNESS: No, sir. 22 Q (BY MR. KILBORN:) Well, where did these 23 words come from?</p> <p style="text-align: right;">260</p>

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<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 THE WITNESS: Again, as I said, all of our</p> <p>3 forms -- all of our documents are reviewed by our legal</p> <p>4 counsel and that was put on there.</p> <p>5 Q (BY MR. KILBORN:) Well, you do know that</p> <p>6 there is an anti-discrimination because of sex, don't</p> <p>7 you?</p> <p>8 A Uh-huh.</p> <p>9 Q Race?</p> <p>10 A Yes.</p> <p>11 Q Creed?</p> <p>12 A Yes.</p> <p>13 Q Color?</p> <p>14 A Yes.</p> <p>15 Q National origin, correct?</p> <p>16 A Yes.</p> <p>17 Q Age?</p> <p>18 A Yes.</p> <p>19 Q Disability?</p> <p>20 A Yes.</p> <p>21 Q And then this word Vietnam veteran status</p> <p>22 pops up, doesn't it?</p> <p>23 A Yes.</p> <p style="text-align: right;">261</p>	<p>1 Q So you're not aware of any federal law that</p> <p>2 protects against discrimination for Korean veterans?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: From the USERRA standpoint,</p> <p>5 yes, but not that there's a protected class for</p> <p>6 veterans.</p> <p>7 Q (BY MR. KILBORN:) All right. How about Iraq</p> <p>8 War veterans?</p> <p>9 A From the USERRA perspective, yes, but not</p> <p>10 from a protected class.</p> <p>11 Q How about National Guard?</p> <p>12 A Same.</p> <p>13 Q What's the answer?</p> <p>14 A The answer is the same, that you have a</p> <p>15 USERRA law that protects everyone in the military from</p> <p>16 an employment perspective.</p> <p>17 Q Is that an important law?</p> <p>18 BY MR. SCOFIELD: Object to the form.</p> <p>19 THE WITNESS: Of course.</p> <p>20 Q (BY MR. KILBORN:) Probably the most</p> <p>21 important law, isn't it?</p> <p>22 BY MR. SCOFIELD: Object to the form.</p> <p>23 THE WITNESS: I think they're all important.</p> <p style="text-align: right;">263</p>
<p>1 Q Okay. Well, why would you refer to Vietnam</p> <p>2 veteran status and not include Korean veterans?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: I don't have an answer for you.</p> <p>5 I don't know.</p> <p>6 Q (BY MR. KILBORN:) Why would you not include</p> <p>7 the first Iraq War combat veterans?</p> <p>8 A I don't know.</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 Q (BY MR. KILBORN:) Were they protected?</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 THE WITNESS: As I said, this form and this</p> <p>13 statement was put on by our legal counsel.</p> <p>14 Q (BY MR. KILBORN:) That's not my question.</p> <p>15 Are they protected?</p> <p>16 A Are they protected?</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 Q (BY MR. KILBORN:) Yes, are they a class of</p> <p>19 protected people?</p> <p>20 A Everyone is protected in one way, shape or</p> <p>21 form.</p> <p>22 Q But what about by a federal law?</p> <p>23 A Not that I'm aware of, no.</p> <p style="text-align: right;">262</p>	<p>1 Q (BY MR. KILBORN:) Yeah, but people who are</p> <p>2 in charge of protecting America from, say, terrorist</p> <p>3 attacks are even more important than those who are</p> <p>4 protected because of, let's say, disability or sex? I</p> <p>5 mean, these are people who keep us from getting killed,</p> <p>6 aren't they?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: That's certainly a personal</p> <p>9 opinion.</p> <p>10 Q (BY MR. KILBORN:) Do you disagree with that?</p> <p>11 A As I said, I agree that all the laws are</p> <p>12 important to protect everyone.</p> <p>13 Q Well, why is this very important law missing</p> <p>14 from this form?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: I don't have an answer for you.</p> <p>17 I don't know.</p> <p>18 Q (BY MR. KILBORN:) Well, it's not going to</p> <p>19 stay missing for long once you get back, is it?</p> <p>20 BY MR. SCOFIELD: Object to the form.</p> <p>21 THE WITNESS: Again, that's not something</p> <p>22 that I would be able to answer.</p> <p>23 Q (BY MR. KILBORN:) Well, you're not going to</p> <p style="text-align: right;">264</p>

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<p>1 make a recommendation to make sure that Hyundai's</p> <p>2 employment discrimination forms are correct?</p> <p>3 BY MR. SCOFIELD: Object to the form.</p> <p>4 THE WITNESS: I would take that under</p> <p>5 advisement.</p> <p>6 Q (BY MR. KILBORN:) Look at Bates Number 33.</p> <p>7 It's February 23, 2007. It looks like a memo from</p> <p>8 Rob Clevenger to Greg Kimble. Did you read that before</p> <p>9 this termination meeting in this termination room?</p> <p>10 A This was presented at the termination</p> <p>11 committee meeting.</p> <p>12 Q By who?</p> <p>13 A Rob Clevenger.</p> <p>14 Q It was a decision made based on this memo?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: This memo, as well as all of</p> <p>17 the other investigation information and meetings with</p> <p>18 Mr. Dees, as well as the witness.</p> <p>19</p> <p>20 (Whereupon, a discussion was held off the</p> <p>21 record.)</p> <p>22</p> <p>23 Q (BY MR. KILBORN:) Take a look at the next</p> <p style="text-align: right;">265</p>	<p>1 Q Do you know who put it in there?</p> <p>2 A My understanding is that this was showing</p> <p>3 past practice. This gentleman was sleeping on the job</p> <p>4 and so it was showing the past practice of what we had</p> <p>5 done.</p> <p>6 Q Why was it put in the termination file?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: It was put in the team</p> <p>9 relations file as consistency in terms of what we had</p> <p>10 done in the past.</p> <p>11 Q (BY MR. KILBORN:) Evidence of consistency?</p> <p>12 A Yes, sir.</p> <p>13 Q Okay. So what you did was you -- somebody at</p> <p>14 HMMA put in the team relations file some evidence of</p> <p>15 consistency to bolster the defense of the Dees matter?</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 THE WITNESS: This was also part of our</p> <p>18 termination committee meeting, so the team relations</p> <p>19 will bring in all similar cases and share what the</p> <p>20 outcome of that particular investigation was.</p> <p>21 Q (BY MR. KILBORN:) So this was presented --</p> <p>22 A Yes.</p> <p>23 Q -- at the team relations committee?</p> <p style="text-align: right;">267</p>
<p>1 page, Bates Number 34.</p> <p>2 A Uh-huh.</p> <p>3 Q It says team relations memo. It's got a big</p> <p>4 stamp in the middle that says: Redacted-privileged.</p> <p>5 Do you know what this is doing in Mr. Dees'</p> <p>6 personnel file?</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: I don't believe this piece was</p> <p>9 in his personnel file. This was a team relations</p> <p>10 piece, but we can check and see because once he was</p> <p>11 termed it may have been put in there.</p> <p>12 BY MR. SCOFIELD: It's in the team relations.</p> <p>13 Just for purposes of the record, as far as the</p> <p>14 document, which we've redacted based on attorney-client</p> <p>15 privilege, I've withheld it. And I think we identified</p> <p>16 in our discovery responses that it's a notation by</p> <p>17 Mr. Neal and we've redacted based on attorney-client</p> <p>18 communication.</p> <p>19 BY MR. KILBORN: What file is it in?</p> <p>20 BY MR. SCOFIELD: Team relations file.</p> <p>21 Q (BY MR. KILBORN:) Did you, Ms. Warner, put</p> <p>22 it in the team relations file?</p> <p>23 A No, I wouldn't have done that.</p> <p style="text-align: right;">266</p>	<p>1 A Termination committee meeting. That's part</p> <p>2 of our procedure.</p> <p>3 Q Was it redacted as privileged at that</p> <p>4 meeting?</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 THE WITNESS: No, I've not seen that before.</p> <p>7 Q (BY MR. KILBORN:) So it was part of the</p> <p>8 evidence presented to justify termination before it was</p> <p>9 decided?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: To substantiate our past</p> <p>12 practice if someone was sleeping on the job. This</p> <p>13 person intentionally had made a bed above the line in</p> <p>14 engine and was found sleeping in the bed, so it was a</p> <p>15 similar case.</p> <p>16 Q (BY MR. KILBORN:) So Dees hadn't been</p> <p>17 terminated yet, had he?</p> <p>18 A No, but we do look at past practice from a</p> <p>19 consistency perspective and all similar cases.</p> <p>20 Q Well, how many other similar cases, other</p> <p>21 than this one at Bates 34?</p> <p>22 A This particular one, there was just one.</p> <p>23 Q Just one?</p> <p style="text-align: right;">268</p>

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<p>1 A Yes.</p> <p>2 Q Out of how many employees?</p> <p>3 A That have been terminated or that are</p> <p>4 employed.</p> <p>5 Q Yeah, that have been terminated.</p> <p>6 A As I said, thirty to forty a year.</p> <p>7 Q For sleeping?</p> <p>8 A No, total.</p> <p>9 Q How many cases were presented at the</p> <p>10 termination committee meeting, other than this one on</p> <p>11 Number 34?</p> <p>12 A For sleeping?</p> <p>13 Q Right.</p> <p>14 One?</p> <p>15 A And the other ones as I mentioned to you were</p> <p>16 not intentional, there was dozing at the desk or a</p> <p>17 sleep apnea case, but this individual was actually</p> <p>18 sleeping intentional.</p> <p>19 Q Intentional?</p> <p>20 A Yes. Made a bed above the line in a</p> <p>21 cardboard box.</p> <p>22 Q And you terminated this individual?</p> <p>23 A Yes.</p> <p style="text-align: right;">269</p>	<p>1 THE WITNESS: No, just the top part.</p> <p>2 Q (BY MR. KILBORN:) So there was writing down</p> <p>3 here which said redacted-privileged?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: I don't know about that, I just</p> <p>6 know that this was presented in the block like that of</p> <p>7 all past practices. And that's our normal procedure</p> <p>8 that we do at each meeting.</p> <p>9 Q (BY MR. KILBORN:) Well, did Mr. Neal state</p> <p>10 something about this case?</p> <p>11 BY MR. SCOFIELD: Object to the form. I'm</p> <p>12 going to instruct her not to answer based on</p> <p>13 attorney-client.</p> <p>14 Q (BY MR. KILBORN:) And who was in the meeting</p> <p>15 where this was done?</p> <p>16 A Same people.</p> <p>17 Are you talking about the actual termination</p> <p>18 or the termination committee?</p> <p>19 Q The meeting where this document, Bates Number</p> <p>20 34, was presented.</p> <p>21 BY MR. SCOFIELD: To clarify that, would be</p> <p>22 the termination committee meeting.</p> <p>23 THE WITNESS: The committee meeting?</p> <p style="text-align: right;">271</p>
<p>1 Q So you are personally familiar with it?</p> <p>2 A Yes.</p> <p>3 Q What was the person's name?</p> <p>4 A This individual?</p> <p>5 Q Right.</p> <p>6 A Ontario King.</p> <p>7 Q Ontario King?</p> <p>8 A Uh-huh.</p> <p>9 Q And when was he terminated?</p> <p>10 A January 3rd of '06.</p> <p>11 Q All right. Was he a member of a protected</p> <p>12 class?</p> <p>13 A Yes.</p> <p>14 Q What class?</p> <p>15 A He was a minority, a black male.</p> <p>16 Q Was there a note on here when it was</p> <p>17 presented to the termination committee?</p> <p>18 BY MR. SCOFIELD: Object to the form.</p> <p>19 THE WITNESS: It was presented just like</p> <p>20 this.</p> <p>21 Q (BY MR. KILBORN:) It was presented with the</p> <p>22 words redacted-privileged?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">270</p>	<p>1 Q (BY MR. KILBORN:) Yeah.</p> <p>2 A The same people as were in on the meeting on</p> <p>3 the front page.</p> <p>4 Q The front page?</p> <p>5 A Yeah.</p> <p>6 Q So 34 is part of 33?</p> <p>7 A That would be my take.</p> <p>8 Q All right. And the people listed on 33 are</p> <p>9 Kimble, Clevenger. I don't see any other people. I</p> <p>10 see people's names, but I don't see who else was in the</p> <p>11 meeting.</p> <p>12 BY MR. SCOFIELD: I don't want you to get</p> <p>13 confused. I believe the question on the table is who</p> <p>14 was present at the termination committee meeting.</p> <p>15 THE WITNESS: Right.</p> <p>16 BY MR. SCOFIELD: Okay.</p> <p>17 THE WITNESS: The same people as we talked</p> <p>18 about. It was myself, the assistant manager for</p> <p>19 employment, Mr. Neal as the adviser, the head of the</p> <p>20 department, John Applegate, the vice president for</p> <p>21 production and the team relations manager, Auddie</p> <p>22 Swagman, and Rob Clevenger.</p> <p>23 Q (BY MR. KILBORN:) And who, Clevenger?</p> <p style="text-align: right;">272</p>

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<p>1 A Yes, sir.</p> <p>2 Q So the only lawyer in the room was Mr. Neal?</p> <p>3 A Yes.</p> <p>4 Q And he's in every termination meeting?</p> <p>5 A Yes.</p> <p>6 BY MR. KILBORN: Trent, I think we've asked</p> <p>7 for the unredacted document, but we'll deal with that</p> <p>8 later.</p> <p>9 Q (BY MR. KILBORN:) And how many people were</p> <p>10 employed at the plant on the termination date?</p> <p>11 A January 6th or January 7th?</p> <p>12 Q February 26th, 2007.</p> <p>13 BY MR. SCOFIELD: How many people were</p> <p>14 employed at the plant?</p> <p>15 BY MR. KILBORN: At HMMA, yes.</p> <p>16 THE WITNESS: It hasn't changed much since</p> <p>17 now. I wouldn't know exactly, but I could give you a</p> <p>18 ballpark, twenty-eight hundred.</p> <p>19 Q (BY MR. KILBORN:) The next document is</p> <p>20 Number 35. It's a February 21st, 2007 memo from</p> <p>21 Mr. Applegate who was in the termination committee</p> <p>22 meeting to Mr. Clevenger who was in the termination</p> <p>23 committee meeting. Are you familiar with that?</p> <p style="text-align: right;">273</p>	<p>1 was a member of the National Guard, didn't he?</p> <p>2 BY MR. SCOFIELD: Object to the form.</p> <p>3 THE WITNESS: Based on this, I would assume</p> <p>4 so. And I know Greg was, too. Mr. Prater was as well</p> <p>5 in the military.</p> <p>6 Q (BY MR. KILBORN:) How do you know that?</p> <p>7 A I know Greg just in terms of his conversation</p> <p>8 and his military experience.</p> <p>9 Q What did he tell you about that?</p> <p>10 A That he had served in the military.</p> <p>11 Q What theatre?</p> <p>12 A I don't know, but my take would be they were</p> <p>13 talking the same genre, that they perhaps had had the</p> <p>14 same experience.</p> <p>15 Q It talks about text messaging his daughter in</p> <p>16 there. Was that discussed at the termination committee</p> <p>17 meeting?</p> <p>18 A Yes, in terms of when they asked Mr. Dees why</p> <p>19 he was up there on the third floor, he said that he was</p> <p>20 text messaging his daughter because he had been</p> <p>21 concerned about the weather and wanted to make sure she</p> <p>22 was all right.</p> <p>23 Q Okay. You didn't believe that?</p> <p style="text-align: right;">275</p>
<p>1 A This memo?</p> <p>2 Q Right.</p> <p>3 A No, I have not seen this memo.</p> <p>4 Q You haven't seen it before now?</p> <p>5 A No.</p> <p>6 Q In the middle of the page there, it -- Prater</p> <p>7 is apparently saying to Applegate: I explained that</p> <p>8 what you do if you were a forward observer on lookout</p> <p>9 and on guard duty and you had someone officer come by</p> <p>10 where you have done the same. His reply was: That's</p> <p>11 totally different, you can't compare that with this.</p> <p>12 And he goes on about his war stories and then back to</p> <p>13 the point.</p> <p>14 Do you know why that subject was brought up?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: Sorry, I don't. I've not seen</p> <p>17 this E-mail.</p> <p>18 Q (BY MR. KILBORN:) Why was Prater referring</p> <p>19 to an analogy to Dees' work as a forward observer on</p> <p>20 guard duty?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: I'm sorry, I don't know.</p> <p>23 Q (BY MR. KILBORN:) Obviously, Prater knew he</p> <p style="text-align: right;">274</p>	<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 THE WITNESS: In terms of the time that the</p> <p>3 supervisor said that he observed him up there and the</p> <p>4 time that he said he did that and just the logical</p> <p>5 reason why he would have gone up there as opposed to</p> <p>6 many other places to do that did not seem correct.</p> <p>7 Q (BY MR. KILBORN:) You didn't ask him about</p> <p>8 that?</p> <p>9 BY MR. SCOFIELD: Object to the form.</p> <p>10 THE WITNESS: The team relations person did.</p> <p>11 Q (BY MR. KILBORN:) But you didn't?</p> <p>12 A In terms of the investigation, I did not do</p> <p>13 that, no. It is not my role to do that.</p> <p>14 Q The document which is Bates Number 36 is a --</p> <p>15 it looks like a memo from William Ware to</p> <p>16 Rob Clevenger. Did you have that in front of the</p> <p>17 termination committee?</p> <p>18 A Yes, it was included in the notes.</p> <p>19 Q How about document numbers 37 and 38? That</p> <p>20 looks like the handwritten document called interview</p> <p>21 with Jim Brookshire.</p> <p>22 A Yes.</p> <p>23</p> <p style="text-align: right;">276</p>

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<p>1 (Whereupon, a discussion was held off the 2 record.)</p> <p>3</p> <p>4 Q (BY MR. KILBORN:) Whose notes are these, 37 5 and 38?</p> <p>6 A The interview is with Jim Brookshire, but it 7 appears that that's John Applegate.</p> <p>8 Q And how many interviews are shown there -- 9 BY MR. SCOFIELD: Object to the form.</p> <p>10 Q (BY MR. KILBORN) -- on 37 and 38?</p> <p>11 A How many interviews with Jim Brookshire?</p> <p>12 Q Yes.</p> <p>13 A Just one interview with him.</p> <p>14 Q Let's see, on the bottom of the first page, 15 it's dated 2-15-07, and on the bottom of the second 16 page, it's --</p> <p>17 A 2-19.</p> <p>18 Q -- 2-19. It looks like two different dates.</p> <p>19 A I don't know, I'm sorry, I can't tell you.</p> <p>20 Q And you said that he was -- he basically made 21 a bed, I think he had a pillow. Where is the reference 22 to that?</p> <p>23 A He was in a chair.</p> <p style="text-align: right;">277</p>	<p>1 his head down like this.</p> <p>2 Q So when you referred to a pillow earlier, 3 that was just a -- you just misspoke?</p> <p>4 A Yes, sir.</p> <p>5 Q I don't even see any reference to a jacket. 6 Where is that?</p> <p>7 A Most of the time it is cold in there and 8 especially in February and they have a jacket on 9 because they're going in and out, but I believe he had 10 a jacket on with his shirt so the material and 11 everything, you know, was heavy.</p> <p>12 Q Where does it say that he had a jacket on?</p> <p>13 A That is not in this description, but that's 14 what I recalled in terms of the meeting, that he had a 15 shirt on as well as a jacket.</p> <p>16 Q Well, where does it say that he had a shirt 17 on as well as a jacket?</p> <p>18 A It doesn't say that in here.</p> <p>19 Q Well, Jim Brookshire didn't appear before the 20 committee, did he?</p> <p>21 A No, he did not.</p> <p>22 Q So all you had was to read this as his 23 version and it doesn't say anything like that, does it?</p> <p style="text-align: right;">279</p>
<p>1 Q Where is the reference to the pillow that you 2 talked about?</p> <p>3 A He was sleeping on a piece of material or 4 something that his head -- whether it was a jacket, but 5 his head was down and sleeping.</p> <p>6 Q But you said the word pillow, didn't you?</p> <p>7 A I did.</p> <p>8 Q And where is that in here?</p> <p>9 A It's not in here.</p> <p>10 Q Where is the reference to he had a jacket?</p> <p>11 A His head was facing toward the floor with his 12 chin tucked to his chest, so the jacket as a pillow 13 that he was sleeping on his shoulder.</p> <p>14 Q Read to me where it says that he had made 15 some type of pillow out of a jacket.</p> <p>16 A There is not anything in here that says a 17 pillow.</p> <p>18 Q Well, where did you get that from?</p> <p>19 A I said that he was sleeping on his chest like 20 a pillow, but that's what I was interpreting to say. 21 There's nothing in here that says it was a pillow.</p> <p>22 Q So his chest was the pillow?</p> <p>23 A The jacket that he was in, yes, sleeping with</p> <p style="text-align: right;">278</p>	<p>1 A No, it doesn't.</p> <p>2 Q So you're just making up the fact that he had 3 a jacket on and he was using a jacket like a pillow, 4 aren't you?</p> <p>5 BY MR. SCOFIELD: Object to the form.</p> <p>6 THE WITNESS: That was my interpretation the 7 way it was described to me.</p> <p>8 Q (BY MR. KILBORN:) Well, it was described in 9 this document. It wasn't described verbally, was it?</p> <p>10 A Mr. Applegate was there and reiterated the 11 situation as it was explained to him by Mr. Brookshire.</p> <p>12 Q Well, we can agree that Brookshire didn't say 13 anything like that on 37 and 38, can't we?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 Q (BY MR. KILBORN:) We can agree on that, 16 can't we?</p> <p>17 A Yes.</p> <p>18 Q And we can agree that nothing like that 19 appears on Bates Number 36, the February 21, 2007 20 interview with the Dees, Ware and Prater, can't we?</p> <p>21 A That would be correct.</p> <p>22 Q And we can agree that nothing like that 23 appears on Praytor's memo to Applegate, which is Bates</p> <p style="text-align: right;">280</p>

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<p>1 Number 35, can't we, dated February 21, 2007?</p> <p>2 A Yes.</p> <p>3 Q And we can agree that nothing like that</p> <p>4 appears on the memo from Clevenger to Kimble dated</p> <p>5 February 23rd, 2007 based on Number 33, can't we?</p> <p>6 A In regards to the pillow part?</p> <p>7 Q The jacket or the pillow.</p> <p>8 A Yes.</p> <p>9 Q And none of the witnesses like Brookshire or</p> <p>10 Applegate or Prater were at this meeting -- team</p> <p>11 termination committee meeting, were they?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: Mr. Applegate was, yes.</p> <p>14 Q (BY MR. KILBORN:) Oh, Mr. Applegate was?</p> <p>15 A Yes, sir.</p> <p>16 Q He presented this information here?</p> <p>17 A Yes, sir.</p> <p>18 Q These documents?</p> <p>19 A Yes, sir.</p> <p>20 Q He wasn't an eyewitness to anything, was he?</p> <p>21 A No.</p> <p>22 Q The only eyewitness was Brookshire?</p> <p>23 A Correct.</p> <p style="text-align: right;">281</p>	<p>1 Q It doesn't say anything about sleeping, does</p> <p>2 it?</p> <p>3 A No.</p> <p>4 BY MR. KILBORN: Let's just take one more</p> <p>5 break and then we'll finish this.</p> <p>6</p> <p>7 (Whereupon, there was a recess held in the</p> <p>8 deposition.)</p> <p>9</p> <p>10 BY MR. KILBORN: During the break, we've</p> <p>11 got -- counsel and I discussed the copying of Exhibits</p> <p>12 1 through 4, which are the original records, and we</p> <p>13 requested that the court reporter be allowed to take</p> <p>14 these and copy them and Federal Express them back to</p> <p>15 counsel. Hyundai does not want to do that so I have</p> <p>16 agreed in the alternative to return these to counsel to</p> <p>17 copy and get copies back to the court reporter.</p> <p>18 BY MR. SCOFIELD: That's our agreement.</p> <p>19 Q (BY MR. KILBORN:) Ms. Warner, turn to</p> <p>20 document number 39, the February 9, 2007 E-mail that</p> <p>21 has an original message dated the 7th of February,</p> <p>22 2007. You got that?</p> <p>23 A I think so, yes. 39 you said?</p> <p style="text-align: right;">283</p>
<p>1 Q And the only way Brookshire's information got</p> <p>2 before the committee was in his interview?</p> <p>3 A Yes.</p> <p>4 Q And the next Bates Number is 39. It looks</p> <p>5 like a memo from Prater to Applegate dated February 8,</p> <p>6 2007. Does this have anything to do with the sleeping</p> <p>7 incident?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: No, sir.</p> <p>10 Q (BY MR. KILBORN:) This was -- What was the</p> <p>11 date of the sleeping incident, February 8th?</p> <p>12 A February 14th.</p> <p>13 Q February 14th.</p> <p>14 So this Bates Number 39 is six days before;</p> <p>15 is that correct?</p> <p>16 A I am not familiar with this E-mail. This</p> <p>17 appears to have come from team relations, but it does</p> <p>18 say February 8th on it.</p> <p>19 Q And it's -- The original message was from</p> <p>20 Ware to Clevenger, wasn't it?</p> <p>21 A Yes.</p> <p>22 Q And it was about Leon Dees, wasn't it?</p> <p>23 A Subject says Leon Dees.</p> <p style="text-align: right;">282</p>	<p>1 Q Yes, ma'am.</p> <p>2 A Yes.</p> <p>3 Q Have you ever seen this before?</p> <p>4 A I don't recall seeing this.</p> <p>5 Q Was it part of the termination committee</p> <p>6 meeting that made the decision to terminate?</p> <p>7 A No.</p> <p>8 Q William Ware, who wrote the original E-mail</p> <p>9 to Mr. Clevenger with copies to Greg Prater, he was a</p> <p>10 team relations specialist?</p> <p>11 A Uh-huh.</p> <p>12 Q Was he on the committee?</p> <p>13 A No.</p> <p>14 Q But Mr. Clevenger who got this E-mail was?</p> <p>15 A Yes, and he's Mr. Ware's supervisor.</p> <p>16 Q Right. And in that, it discusses an</p> <p>17 incident. He says: Greg P. and I met with all the TMs</p> <p>18 in question about Leon leaving for lunch while the lift</p> <p>19 was done. And it goes on. I won't read it all, you're</p> <p>20 welcome to read it. It says: TMs performing the</p> <p>21 repair should have waited until help arrived to take</p> <p>22 over the repair. Let's see, what's that say, T -- I</p> <p>23 put a mark over it, I can't read it. TL, is that --</p> <p style="text-align: right;">284</p>

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<p>1 A Yes.</p> <p>2 Q The TL, who would that be?</p> <p>3 A The team leader.</p> <p>4 Q Team leader, that would be who?</p> <p>5 A I don't know who it would be, but it would be</p> <p>6 the lead team member in a group out on the plant floor.</p> <p>7 Q Okay. The TL and Leon are not on speaking</p> <p>8 terms and it appears that he blew the incident out of</p> <p>9 proportion and he only singled Leon but for no apparent</p> <p>10 reason.</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 Q (BY MR. KILBORN:) Singled out -- Singled</p> <p>13 Leon out for no apparent reason. Proper communication</p> <p>14 and test transfer will be the topics of the discussion</p> <p>15 planners.</p> <p>16 Do you know anything about that?</p> <p>17 A I'm sorry, I don't.</p> <p>18 Q What would that mean to you as a human</p> <p>19 relations -- human resources person that an employee</p> <p>20 was singled out for no apparent reason?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: As I said, I don't know what</p> <p>23 the context of this was. I do know that in maintenance</p> <p style="text-align: right;">285</p>	<p>1 Q Previous discussion planners weren't brought</p> <p>2 up in the termination committee meeting?</p> <p>3 A No.</p> <p>4 Q So his past employment relationships with</p> <p>5 HMMA were not a consideration?</p> <p>6 A It's a factor in all the cases, yes.</p> <p>7 Q You said it is a factor?</p> <p>8 A Yes, to review all of the information of</p> <p>9 corrective actions. These were discussion planners so</p> <p>10 that wasn't a form of corrective action. But if the</p> <p>11 individual had been on any other corrective action, it</p> <p>12 would have been discussed in the termination meeting.</p> <p>13 Q Look at Bates Number 70. That's a request</p> <p>14 for leave form signed by Mr. Dees September 28th, 2005.</p> <p>15 A Uh-huh.</p> <p>16 Q Is that a mandatory form?</p> <p>17 BY MR. SCOFIELD: Object to the form.</p> <p>18 THE WITNESS: This is a form that goes to</p> <p>19 payroll to pay the person.</p> <p>20 Q (BY MR. KILBORN:) Is that mandatory?</p> <p>21 A If the person wants to be paid the difference</p> <p>22 between his rate of his military pay and his pay with</p> <p>23 the HMMA, this form does need to be turned into</p> <p style="text-align: right;">287</p>
<p>1 when the production team members are at lunch, that's</p> <p>2 when they're repairing on the lines and the stamping</p> <p>3 presses and it is protocol in maintenance that the</p> <p>4 person that has something to do in terms of a project</p> <p>5 refers it back to another person, but I don't know</p> <p>6 about this particular situation.</p> <p>7 As I said, I'm not familiar with this</p> <p>8 particular situation. I don't know what it means.</p> <p>9 Q (BY MR. KILBORN:) Do you know why -- what</p> <p>10 it's referring to when it says that the TL and Leon are</p> <p>11 not on speaking terms?</p> <p>12 A I'm sorry, I don't know. Not clear.</p> <p>13 Q Prior to the termination on February 26th,</p> <p>14 2007, did Mr. Dees have a good employment record with</p> <p>15 HMMA?</p> <p>16 BY MR. SCOFIELD: Object to the form.</p> <p>17 THE WITNESS: My understanding is that there</p> <p>18 were some discussion planners but no other concerns in</p> <p>19 that regard.</p> <p>20 Q (BY MR. KILBORN:) And discussion planner is</p> <p>21 what?</p> <p>22 A First level of corrective action but not</p> <p>23 severe, just counseling.</p> <p style="text-align: right;">286</p>	<p>1 benefits and then processed for payroll.</p> <p>2 Q And if he doesn't, then it's not necessary?</p> <p>3 A That's right.</p> <p>4 Q And Bates Number 76 is a letter from</p> <p>5 Melanie McCormick to Mr. Dees about his military leave</p> <p>6 and his military orders?</p> <p>7 A I'm sorry, what page?</p> <p>8 Q 76.</p> <p>9 A Yes.</p> <p>10 Q She states that she hasn't received a copy of</p> <p>11 his military orders. Was that mandatory?</p> <p>12 BY MR. SCOFIELD: Object to the form.</p> <p>13 THE WITNESS: Again, for pay.</p> <p>14 Q (BY MR. KILBORN:) The copy of the orders was</p> <p>15 mandatory?</p> <p>16 A For pay.</p> <p>17 Q For pay, but not for permission to have drill</p> <p>18 duty?</p> <p>19 A Correct.</p> <p>20 Q Did you talk to -- Prior to the termination</p> <p>21 on February 26th, 2007, did you talk to Mr. Brookshire</p> <p>22 or Mr. Prater about the alleged sleeping incident?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">288</p>

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<p>1 THE WITNESS: No.</p> <p>2 Q (BY MR. KILBORN:) Had you ever met either</p> <p>3 one of them?</p> <p>4 A Yes.</p> <p>5 Q And is there a place where Mr. Dees worked</p> <p>6 called the pit?</p> <p>7 A Those are where the stamping presses are, so</p> <p>8 that's called the pit.</p> <p>9 Q Have you been there?</p> <p>10 A I've been there before. I don't regularly go</p> <p>11 there, but, yeah, I've been there.</p> <p>12 Q How would you describe that, working in the</p> <p>13 pit?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: How would I describe working in</p> <p>16 the pit, it's loud because the presses are pounding the</p> <p>17 steel. It is a dangerous area where a lot of safety is</p> <p>18 important and safety training is important and it is</p> <p>19 the first area that the steel comes in to make the</p> <p>20 various body parts for the vehicle.</p> <p>21 Q (BY MR. KILBORN:) And I suppose when there's</p> <p>22 the stamping of the steel by the presses going on, it's</p> <p>23 dangerous because of the flying metal?</p> <p style="text-align: right;">289</p>	<p>1 Q (BY MR. KILBORN:) Was Mr. Dees' personnel</p> <p>2 file available at the termination committee meeting?</p> <p>3 A Yes.</p> <p>4 Q So the references to his military obligations</p> <p>5 were in the file?</p> <p>6 A I don't think so.</p> <p>7 BY MR. SCOFIELD: Object to the form.</p> <p>8 THE WITNESS: The personnel file would just</p> <p>9 have had his offer letter and the employment interview</p> <p>10 guide, that background check form. Those kinds of</p> <p>11 things would have been in there.</p> <p>12 Q (BY MR. KILBORN:) For instance, Bates Number</p> <p>13 74, that's a team member change notice. Bates Number</p> <p>14 73, another team member change notice referring to</p> <p>15 military duty. Bates Number 72, military orders.</p> <p>16 Bates Number 71, military orders. Bates Number 70,</p> <p>17 request for military leave.</p> <p>18 A Those are kept in the benefits files. We</p> <p>19 have separate benefits file, obviously for</p> <p>20 confidentiality purposes. My understanding is these</p> <p>21 are all benefit forms, so they would have been kept in</p> <p>22 a benefit file, not the employment file, so we have</p> <p>23 separate files for benefits and for employment.</p> <p style="text-align: right;">291</p>
<p>1 BY MR. SCOFIELD: Object to the form.</p> <p>2 THE WITNESS: I don't know about the flying</p> <p>3 metal, it's just dangerous from the size -- the</p> <p>4 hugeness of the particular press and you have to be</p> <p>5 careful that if you are in there repairing that others</p> <p>6 are aware that that's occurring and lockout/tagout</p> <p>7 principles are followed.</p> <p>8 Q (BY MR. KILBORN:) Is that duty of doing work</p> <p>9 in the pit considered an undesirable duty?</p> <p>10 BY MR. SCOFIELD: Object to the form.</p> <p>11 THE WITNESS: Any maintenance team member job</p> <p>12 is considered a pretty desirable job because it's a</p> <p>13 higher pay than the production positions.</p> <p>14 Q (BY MR. KILBORN:) Well, how about with the</p> <p>15 danger and the noise?</p> <p>16 A I think in all areas if you're in an assembly</p> <p>17 plant it does have a degree of noise and a degree of</p> <p>18 danger.</p> <p>19 Q So you don't think that's a particularly bad</p> <p>20 job?</p> <p>21 BY MR. SCOFIELD: Object to the form.</p> <p>22 THE WITNESS: Not as a maintenance team</p> <p>23 member, no.</p> <p style="text-align: right;">290</p>	<p>1 Q Well, how was his personnel file -- How did</p> <p>2 his personnel file reflect that he was a member of a</p> <p>3 protected class under USERRA?</p> <p>4 BY MR. SCOFIELD: Object to the form.</p> <p>5 THE WITNESS: How would it have what?</p> <p>6 Q (BY MR. KILBORN:) Reflected that he was a</p> <p>7 member of a protected class under USERRA?</p> <p>8 A I can look in the file, but I don't think</p> <p>9 it's in there.</p> <p>10 Q Well, let's take a look.</p> <p>11 A Yeah.</p> <p>12 Q How was it noted in his personnel file that</p> <p>13 he was a member of a protected class?</p> <p>14 BY MR. SCOFIELD: Object to the form.</p> <p>15 THE WITNESS: We have a self-identifying</p> <p>16 piece for any type of protective classes that's handled</p> <p>17 by our diversity section, so that would have been done</p> <p>18 during orientation and that information would have been</p> <p>19 collected by our diversity group. It wouldn't have</p> <p>20 been in here is my take.</p> <p>21 Q (BY MR. KILBORN:) So it would be a separate</p> <p>22 file called a diversity group file?</p> <p>23 A There wouldn't have been a file because it's</p> <p style="text-align: right;">292</p>

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<p>1 self-identifying. The person doesn't have to disclose 2 who they are, they can just state that they are a 3 protected class for this reason or that reason. They 4 can put their name down, but they're not required to.</p> <p>5 Q So take a look at the documents that we just 6 referred to. Who within HMMA would have known of Dees' 7 National Guard Reservist obligations?</p> <p>8 BY MR. SCOFIELD: Object to the form.</p> <p>9 THE WITNESS: I'd be guessing.</p> <p>10 Q (BY MR. KILBORN:) You don't have to guess 11 with Mr. Prater, do you?</p> <p>12 A A supervisor would know, sure.</p> <p>13 Q You don't have to guess with Mr. Ware, do 14 you?</p> <p>15 BY MR. SCOFIELD: Object to the form.</p> <p>16 THE WITNESS: A team relations rep, that 17 would be correct.</p> <p>18 Q (BY MR. KILBORN:) You don't have to guess 19 with Mr. Clevenger, do you?</p> <p>20 A Clevenger, he would know, yes.</p> <p>21 Q Okay.</p> <p>22 A It's not in the personnel file.</p> <p>23 Q You wouldn't have to guess with Ms. Melanie</p> <p style="text-align: right;">293</p>	<p>1 computerized?</p> <p>2 A No.</p> <p>3 BY MR. KILBORN: I do want to identify this 4 manual.</p> <p>5 Q (BY MR. KILBORN:) Let's take a look at -- 6 I'm calling it a team member manual or handbook. It's 7 Dees 9-65.</p> <p>8 A Uh-huh.</p> <p>9 BY MR. SCOFIELD: And, Vince, I think those 10 are documents you produced to us so she's not going to 11 have a copy in front of her.</p> <p>12</p> <p>13 (Whereupon, a discussion was held off the 14 record.)</p> <p>15</p> <p>16 Q (BY MR. KILBORN:) Looking at your records, 17 it looks like the first Bates Number is 5, but I don't 18 see a cover page. Is that the team member handbook?</p> <p>19 A Yes, sir.</p> <p>20 Q Does it have a cover page?</p> <p>21 A It's a hard copy, so maybe the cover is not 22 copied because it's a hard copy on the front and the 23 back and this is all the contents that are paper. It's</p> <p style="text-align: right;">295</p>
<p>1 McCormick, would you?</p> <p>2 A She is in benefits -- or was in benefits. 3 She's no longer with us.</p> <p>4 Q And if you take a look at Bates Number 70, 5 that's the manager's signature. Whose signature would 6 that be?</p> <p>7 A Number 70?</p> <p>8 Q 70, yes, ma'am. That's a request for leave 9 form.</p> <p>10 A Good question. Manager not available, but I 11 have -- I don't know whose initials those are. I 12 certainly can see Mr. Dees' signature, but I don't 13 know. There's no signature, it's just initials.</p> <p>14 Q Look at 73. That's a team member change 15 notice noted in handwriting, return from military 16 leave. It looks like it's got somebody's initials with 17 the hiring department?</p> <p>18 A Yes. I don't know who the little one is. I 19 know the bottom would be Scott Gordy in terms of 20 confirming if this information is correct before it 21 goes in the system, but this -- I don't know who that 22 smaller signature is.</p> <p>23 Q Are the personnel files scanned and</p> <p style="text-align: right;">294</p>	<p>1 got a cover on it, hard cover.</p> <p>2 Q Well, just give me the Bates Numbers of the 3 team member handbook.</p> <p>4 BY MR. SCOFIELD: It look like it runs Number 5 5 through --</p> <p>6 THE WITNESS: Sorry.</p> <p>7 BY MR. SCOFIELD: -- 54 and it says just for 8 clarifying --</p> <p>9 THE WITNESS: That's not it. 53.</p> <p>10 BY MR. SCOFIELD: -- Warner depo doc. That's 11 the Bates Number on the bottom.</p> <p>12 Q (BY MR. KILBORN:) We marked 5 and I didn't 13 ask you about it. These are some additional documents 14 that were produced today.</p> <p>15 A You want this back?</p> <p>16 Q Yes, ma'am.</p> <p>17 This is a memo of March 2nd, 2007 from Nancy 18 Powers to Mr. Clevenger. Have you got any familiarity 19 with that?</p> <p>20 A Nancy Powers was executive assistant to 21 Mr. Kimble, so it appears that Nancy was informing 22 Mr. Clevenger that Mr. Dees had called Mr. Kimble's 23 number and Mr. Kimble was out on medical leave. This</p> <p style="text-align: right;">296</p>

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<p>1 would have been after he was terminated, but I had not 2 seen it.</p> <p>3 Q It says -- It looks like they write in the 4 second paragraph: I asked if he had talked to team 5 relations. He said, quote: They terminated me 6 yesterday at five o'clock and I haven't talked to 7 anybody. He said: They didn't give me a warning or a 8 letter or ten days.</p> <p>9 Do you remember that conversation?</p> <p>10 A No, sir.</p> <p>11 BY MR. SCOFIELD: Object to the form.</p> <p>12 Q (BY MR. KILBORN:) And then there's a sketch. 13 Do you know what that sketch is?</p> <p>14 A That's a sketch of where Mr. Dees was located 15 up on the third floor.</p> <p>16 Q And what is this object here?</p> <p>17 A I don't recall.</p> <p>18 Q That's a chair obviously?</p> <p>19 A Yes, sir.</p> <p>20 Q And are these supposed to be doors?</p> <p>21 A Yes, sir.</p> <p>22 Q Hiding place?</p> <p>23 BY MR. SCOFIELD: Object to the form.</p> <p style="text-align: right;">297</p>	<p>1 attached hereto.)</p> <p>2</p> <p>3 THE WITNESS: This is an interview guide that 4 we use for all of our production and maintenance team 5 members and it's a standardized interview questions 6 that we ask of all our team members. And this would 7 have been the maintenance team member interview guide 8 that was conducted by a member of HR and a member of 9 the maintenance department.</p> <p>10 Q (BY MR. KILBORN:) After he was employed?</p> <p>11 A Before.</p> <p>12 Q Before?</p> <p>13 A Yeah.</p> <p>14 Q And does it look normal?</p> <p>15 A Yes.</p> <p>16 Q And is it very committed?</p> <p>17 A Limited.</p> <p>18 Q What else does it?</p> <p>19 A Very committed, I'm sorry. Knowledge of 20 PLCs, which are the program logical -- programmable 21 logic computers, good mechanical skills for HMMA.</p> <p>22 Q So at least on this occasion he was found to 23 be a committed person?</p> <p style="text-align: right;">299</p>
<p>1 THE WITNESS: The doors were open and this 2 was equipment to repair.</p> <p>3 Q (BY MR. KILBORN:) Was this presented to the 4 termination committee meeting?</p> <p>5 A I believe so. I believe we have seen this, 6 yes.</p> <p>7 Q Were any photographs produced?</p> <p>8 A No.</p> <p>9 Q Are there minutes of the termination 10 committee meeting?</p> <p>11 A No.</p> <p>12 Q Is it recorded?</p> <p>13 A No.</p> <p>14 Q Are telephone calls recorded?</p> <p>15 A No.</p> <p>16 Q This document, it's got a page fifteen at the 17 bottom. It says at the top scoring matrix. I guess we 18 ought to put Exhibit 10 on it separately even though 19 it's an exhibit within an exhibit.</p> <p>20 What does that show you?</p> <p>21</p> <p>22 (Whereupon, Plaintiff's Exhibit 10 was marked 23 for identification and copy of same is</p> <p style="text-align: right;">298</p>	<p>1 A Threes is meets and twos is has potential, 2 but it's just the explanation of the checklist and 3 the --</p> <p>4 Q And then the next, I'll just mark it as 11. 5 This is an exhibit within an exhibit. For clarity 6 purposes, is this just another --</p> <p>7</p> <p>8 (Whereupon, Plaintiff's Exhibit 11 was marked 9 for identification and copy of same is 10 attached hereto.)</p> <p>11</p> <p>12 THE WITNESS: This is the -- The first one 13 was Anthony Johnson who was HR and this is Danny Blue 14 who was the representative from maintenance and his 15 assessment then they -- the HR and the maintenance 16 interviewee gain consensus on the front page, so this 17 was his opinion of his interview.</p> <p>18 Q (BY MR. KILBORN:) So you get double checks 19 in the interview process?</p> <p>20 A From department as well as HR.</p> <p>21 Q And let's see, the next one is dated November 22 18, '07. Let's mark it as Exhibit 12. It's an exhibit 23 within an exhibit. It looks like it's a March 7, 2007</p> <p style="text-align: right;">300</p>

WENDY SUSAN WARNER

<p>1 letter that we've seen before, but there are some</p> <p>2 handwritten notes on it. Do you know what that's</p> <p>3 about?</p> <p>4</p> <p>5 (Whereupon, Plaintiff's Exhibit 12 was marked</p> <p>6 for identification and copy of same is</p> <p>7 attached hereto.)</p> <p>8</p> <p>9 THE WITNESS: Team member did not attend this</p> <p>10 meeting. He left a phone message on Saturday, March</p> <p>11 10th stating he received the letter, but could not</p> <p>12 attend. No further con- -- contact from Mr. Dees.</p> <p>13 Q (BY MR. KILBORN:) And who would be the team</p> <p>14 member that didn't attend?</p> <p>15 A Would have been Mr. Dees.</p> <p>16 Q Okay. So Mr. Dees didn't attend a team</p> <p>17 member review?</p> <p>18 A He didn't meet with Rob Clevenger to</p> <p>19 coordinate the review meeting.</p> <p>20 Q Was the review held without him?</p> <p>21 A No, he would have needed to have been there</p> <p>22 and wanted to pursue it.</p> <p>23 BY MR. KILBORN: I believe that's all. Thank</p> <p style="text-align: right;">301</p>	<p>1 ERRATA SHEET</p> <p>2</p> <p>3 As you read your deposition, if you have any</p> <p>4 corrections to make, please itemize them below. Upon</p> <p>5 completion, please sign your name to the signature line</p> <p>6 of this errata sheet so that we may attach it to your</p> <p>7 deposition to be returned to the respective Court.</p> <p>8 However, if you do not have any corrections to</p> <p>9 make, please sign your name on the signature line</p> <p>10 location on the last page of your deposition. Thank</p> <p>11 you.</p> <p>12 CORRECTIONS TO DEPOSITION</p> <p>13 PAGE LINE EXPLANATION</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p style="text-align: center;">WENDY SUSAN WARNER</p> <p style="text-align: right;">303</p>
<p>1 you, Ms. Warner.</p> <p>2 FURTHER DEPONENT SAITH NOT</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p style="text-align: right;">302</p>	<p>1 SIGNATURE OF WITNESS</p> <p>2 I _____, do hereby</p> <p>3 certify that on this, the _____ day of _____,</p> <p>4 2007, I have read the foregoing transcript and, to the</p> <p>5 best of my knowledge, it constitutes a true and</p> <p>6 accurate transcript of my testimony taken on oral</p> <p>7 deposition on the 15th day of November, 2007.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p style="text-align: center;">WENDY SUSAN WARNER</p> <p style="text-align: right;">304</p>

WENDY SUSAN WARNER

1 CERTIFICATE
2
3 STATE OF ALABAMA)
4 MOBILE COUNTY)
5
6 I hereby certify that the above and foregoing
7 deposition was taken down by me in stenotype, and the
8 questions and answers thereto were transcribed by means
9 of computer-aided transcription, and that the foregoing
10 represents a true and correct transcript of the
11 testimony given by said witness upon said hearing.
12 I further certify that I am neither of
13 counsel nor of kin to the parties to the action, nor am
14 I in anywise interested in the result of said cause.
15
16
17
18 DONNA E. HENDERSON, CSR, NOTARY PUBLIC
19 My commission expires on the 31st day
20 of July, 2010.
21
22
23

305

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JERRY LEON DEES, JR.,

Plaintiff,

vs.

HYUNDAI MOTOR MANUFACTURING
ALABAMA, LLC, and HYUNDAI MOTOR
AMERICA, INC.,

Defendants.

CASE NO.

2:07-cv-00306-MHT-CSC

DECLARATION OF WENDY WARNER

1. I, Wendy Warner, am the Manager of the Employment Department of Hyundai Motor Manufacturing Alabama, LLC ("HMMA"). I am over the age of 18 and have personal knowledge of the information contained in this Declaration.

2. As the Manager of HMMA's Employment Department, I have access to and regularly utilize the personnel records of individuals employed by HMMA. I also have personal knowledge regarding HMMA's operations, as well as its relationship to Hyundai Motor America, Inc.

3. HMMA was organized in the state of Delaware as a limited liability company and has its principal place of business in Montgomery, Alabama.

4. HMMA is in the business of manufacturing automobiles.

5. HMMA is an independent manufacturing operation of Hyundai Motor Company, based in Seoul, Korea.

6. Plaintiff Jerry Leon Dees, Jr. ("Plaintiff") was formerly employed by HMMA.

7. It is my understanding that Hyundai Motor America, Inc ("HMA") was organized as a corporation in the state of California and has its principal place of business in Fountain Valley, California.

8. It is my understanding that HMA is in the business of distributing Hyundai brand automobiles and parts in the United States.

9. HMA and HMMA are legally distinct and separate corporate entities

10. Plaintiff was not employed by HMA at any time relevant to the allegations contained in the Complaint or, to my knowledge, at any other time.

11. Plaintiff did not receive pay, salary, or benefits from HMA at any time relevant to the allegations contained in the Complaint or at any other time.

12. HMA had no control over Plaintiff's employment opportunities. In other words, the decision to retain or terminate Plaintiff was solely the decision of HMMA, over which HMA had no influence or control.

13. Indeed, HMA had no employment, legal, or other relationship with Plaintiff.

14. Similarly, HMA had no employment, legal, or other relationship with, or right to control or direct, the other individual employees identified in Plaintiff's Complaint, all of whom were employed by HMMA, not HMA.

THIS SPACE INTENTIONALLY LEFT BLANK

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing information is true and correct. Executed this the 2nd day of May, 2007

A handwritten signature in cursive script, appearing to read "W Warner", written in dark ink.

Wendy Warner

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

JERRY LEON DEES, JR.,

Plaintiff,

VS.

HYUNDAI MOTOR MANUFACTURING)
ALABAMA, LLC, and HYUNDAI MOTOR)
AMERICA, INC.,)

Defendants.

CASE NO.

2:07-cv-00306-MHT-CSC

DECLARATION OF WENDY WARNER
(SECOND DECLARATION)

1. I, Wendy Warner, am the Manager of the Employment & Benefits Section of Hyundai Motor Manufacturing Alabama, LLC ("HMMMA"). I am over the age of 18 and have personal knowledge of the information contained in this Declaration.

2. As the Manager of HMMA's Employment & Benefits Section, I manage and have personal knowledge regarding HMMA's human resources matters including policies and procedures, and I have access to and regularly utilize the personnel records of individuals employed by HMMA.

3. Plaintiff Jerry Leon Dees, Jr. ("Plaintiff") was formerly employed by HMMA.

4. After reviewing Plaintiff's personnel files maintained by HMMA, I found no evidence that Plaintiff was employed by Hyundai Motor America, Inc. ("HMA"), or that he was employed by HMA at any other time.

WSW

5. Plaintiff's personnel records, and my consultation with the Payroll Section's records, also reveal that Plaintiff's pay, salary, and benefits were received solely from HMMA during Plaintiff's employment with HMMA. I am not aware of any situation where a HMMA employee receives salary, wages, or other benefits of employment from HMA.

6. HMA had no control over Plaintiff's employment opportunities. In other words, the decision to hire, retain or terminate Plaintiff was solely the decision of HMMA, over which HMA had no influence or control.

7. Upon personal knowledge, HMA did not draft any of HMMA's policies or procedures and did not have input in that process.

8. I sat on the termination committee ("Termination Committee") that considered the information presented by HMMA's Team Relations Section regarding Plaintiff's termination

9. The individuals that sat on the Termination Committee were HMMA Team Members, and were not employed by HMA. Similarly, HMA had no input or right to control the investigation leading up to Plaintiff's termination, the Termination Committee's review and analysis, the Termination Committee's ultimate decision, or the manner in which the termination was carried out by HMMA. Indeed, no HMA employee was at all involved in any of these steps.

10. There are a number of Korean expatriates on loan at HMMA from Hyundai Motor Company in Korea who have assisted in the start-up of operations at HMMA. However, none of these Korean expatriates were involved in the investigation leading up to Plaintiff's termination, the Termination Committee's review and analysis, the Termination Committee's ultimate decision, or the manner in which the termination was carried out by HMMA and, further, these Korean expatriates were not employed by HMA.

WSN

11 It is customary practice during the termination committee process at HMMA for members of the termination committee to review and consider statements or written memoranda from Team Relations. Such documents were considered by the Termination Committee in this case. It is also regular practice for Termination Committees to review any relevant past practice when evaluation termination decisions. The Termination Committee reviewed other instances of sleeping on the job when considering whether to terminate Plaintiff's employment. After conducting an analysis of information received from Team Relations, the Termination Committee makes a decision and takes appropriate action.

12. Prior to the Termination Committee meeting regarding Plaintiff, I did not review any information and had no information concerning the underlying facts or investigation, or Plaintiff's employment or background.

13. The Termination Committee meeting included a presentation by Team Relations concerning Team Relations' investigation and findings after it received a report from a member of HMMA management, Jim Brookshire, that Plaintiff was intentionally sleeping on the job. Team Relations had no reason to doubt Jim Brookshire's report and version of events, nor did the Termination Committee. The only evidence to the contrary was Plaintiff's denial that he had been sleeping. Plaintiff admitted that he was seated in a chair in the same location where Jim Brookshire stated he saw Plaintiff sleeping (in front of a control panel on the isolate third floor mezzanine on a solid floored surface that impaired visual access from lower levels) However, Plaintiff stated he was text messaging his daughter at that time. Regardless, the Termination Committee felt that Brookshire's testimony that Plaintiff was sleeping was unbiased and credible.

WSN

14. The Termination Committee based its decision to terminate Plaintiff's employment solely on the facts relating to Plaintiff sleeping on the job. Intentionally sleeping during working hours was deemed by the Termination Committee to be a violation of HMMA's serious misconduct policy, contained in HMMA's Team Member Handbook, meriting immediate termination.

15. To ensure consistency in its decision-making, the Termination Committee considered information on past practice, including another report of an employee intentionally sleeping during work hours, from Team Relations. There was simply no evidence to suggest HMMA had previously, or should currently, consider any action other than termination under the circumstances.

16. A true and accurate copy of the HMMA Team Member Handbook in effect during Plaintiff's employment is attached as **Attachment A**. HMMA's Corrective Action and Serious Misconduct policies contained within the Team Member Handbook were the basis of Plaintiff's termination. Although Plaintiff may suggest that HMMA improperly implemented the various steps of the Corrective Action policy, a clear reading of the policy and HMMA's past practice reflects this is simply untrue. Although the Corrective Action policy contains suggestions as to steps (Discussion Planner, Informal Discussion–Phase I, Formal Discussion–Phase II, Commitment Discussion–Phase III, Decision Leave–Phase IV, and Termination), the language of the policy states that:

Specific performance-related issues regarding performance, quality, and conduct, will be evaluated on a case-by-case basis, and corrective action may be applied based on the severity of the performance issue. (Handbook, p. 33).

WSW

17. In practice, and as allowed by policy on a case-by-case basis, HMMA has routinely implemented Corrective Action at various steps in this process depending on the particular facts of each situation. As with the past incident of intentional sleeping discussed by the Termination Committee, immediate termination was warranted and appropriate.

18. The Serious Misconduct Policy specifically states that certain acts may place a Team Member outside the Corrective Action process that may subject him or her to immediate termination. (Handbook, p. 34). The non-inclusive list of examples of serious misconduct includes, "Serious and/or excessive violations of HMMA's performance standards." (Handbook, p. 34). Plaintiff's actions were deemed by the Termination Committee to be a serious misconduct violation and, therefore, termination was an appropriate consideration.

19. Further, the Corrective Action Policy confirms that every Team Member's employment is "voluntary" and "is subject to termination by you or HMMA at will, with or without cause, and with or without notice, at any time." (Handbook, p. 33).

20. Likewise, each HMMA Team Member signs a "Receipt of Handbook Acknowledgement." A true and accurate copy of the receipt signed by Plaintiff and contained in his Human Resources file is attached as **Attachment B**. By signing this receipt, Plaintiff acknowledged receipt of the Team Member Handbook and, consequently, the policies contained therein, as well as acknowledging a duty to read the Handbook and to ask questions if he failed to understand any portion thereof. (Receipt, ¶ 5). The Receipt further confirms that the Handbook is "not a contract of any kind" and that employment is "at will" and subject to termination "for any reason or for no reason at any time." (Receipt, ¶ 4).

21. Through the conclusion of the Termination Committee meeting and Plaintiff's termination, I was unaware that Plaintiff was a member of the uniformed services as defined by

the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301, *et seq.* ("USERRA"). Indeed, whether or not Plaintiff was a member of the uniformed services or otherwise was protected by USERRA in any way was not considered by the Termination Committee.

22. Further, Plaintiff's USERRA status would have been irrelevant to the termination committee's analysis because it determined that intentional sleeping on the job was a violation of HMMA's serious misconduct policy meriting immediate termination.

23. As Manager of the Employment & Benefits Section I am also responsible for conducting termination sessions of HMMA Team Members. I personally conducted the termination session for Plaintiff.

24. Plaintiff was escorted to HMMA's security building, which is away from the main production area and, consequently, Plaintiff's co-workers. Part of his escort included unarmed security guards who are present as a matter of HMMA policy and practice in every similar situation to ensure the safety of all HMMA Team Members. Team Members, including Plaintiff, are escorted to the security building in order to conduct such sensitive personnel matters with as much sensitivity and privacy for the Team Member as possible. Likewise, the final steps of termination are carried out in a private conference room, again to ensure the utmost sensitivity and privacy for the Team Member.

25. As with all similar situations, Plaintiff met with me and others to complete the termination session. When Plaintiff was brought into the security building conference room, I introduced him to the other HMMA Team Members who ordinarily play a role in the termination process and explained the purposes of the meeting. I told Plaintiff the Termination Committee decided to terminate his employment based on a report by Team Relations that Plaintiff was

WSW

asleep during work hours. Scott Gordy reviewed an "Exit Interview Questionnaire and Checklist" and "Exit Checklist" with Plaintiff to ensure company property was returned, that Plaintiff received his personal property, and that information concerning final paychecks and benefits was exchanged as necessary.

26. I reviewed a termination letter explaining the basis for his termination, dated February 26, 2007, with Plaintiff and later mailed it to his home address.

27. I also explained to Plaintiff that he could contact Team Relations to initiate the Peer Review process when he was asked if there was anything he could do about his termination. To my knowledge, Plaintiff never attempted to take advantage of the Peer Review process.

28. Although Plaintiff suggested an interest in talking to Team Relations about getting his job back, he did not question the basis of the termination decision or otherwise deny the facts surrounding his termination at that time.

29. During the termination session, although locker contents and personal belongings are customarily a point of discussion, and were in this case, Plaintiff never suggested that he might have additional personal belongings in his locker or that HMMA might have other personal belongings that needed to be returned to him.

30. More importantly, at that time, Plaintiff did not raise the issue of his uniformed service or suggest that he might have protection from termination for any reason under USERRA.

31. HMMA maintains a policy honoring military leave obligations in its Team Member Handbook, and has maintained such a policy since the plant opened in 2005. A true and accurate copy of HMMA's military leave policy existing during Plaintiff's employment is contained on page 22 of the Team Member Handbook, attached hereto as Attachment A.

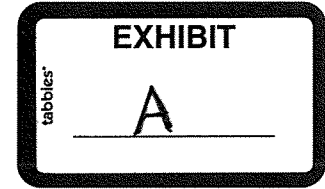
Specifically, HMMA's Team Member Handbook recognizes "leaves of absence for military service, training, or other obligations in compliance with state and federal laws." (Handbook, p. 22). Indeed, HMMA's uniformed service policy even provides for differential pay between military pay and regular wages/salary for up to one month. (Handbook, p. 22).

32. Also, I have personal knowledge that Greg Prater, Plaintiff's supervisor, also served in the military. Prater informed me of his military service on at least one occasion. At no point has Prater given any indication that he would have any animus against the uniformed services or anyone who served in the uniformed services.

33. Greg Kimble is the Director of Human Resources at HMMA. Kimble has not worked at HMMA since January 12, 2007 because he has been on medical leave. Kimble did not attend the Termination Committee to discuss the termination of Plaintiff, and he did not have any input or involvement in the decision to terminate Plaintiff's employment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing information is true and correct. Executed this the 14th day of December, 2007.

Wendy L. Warner 12/14/07
Wendy Warner



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HMMMA HISTORY

Hyundai Motor Company (HMC) was established in 1967. By 1974, HMC produced the Pony as their first independently designed and manufactured model.

In 1985 HMC established Hyundai Motor America (HMA) and launched the Excel which was the best selling import sub-compact in the US for three years. Eight years later Hyundai launched the Sonata II and started assembly of the Excel in Thailand.

Over the last 35 years Hyundai has established its place in a global marketplace. On April 2, 2002, Hyundai announced it had chosen Montgomery, Alabama to build its first U. S. manufacturing facility which will produce the next generation Sonata and Santa Fe.

HMMMA's VISION STATEMENT

Our Team provides value for your future

HMMMA's MISSION STATEMENT

To create exceptional automotive value for our customers by harmoniously blending safety, quality, and efficiency. With our diverse team, we will provide responsible stewardship to our community and environment while achieving stability and security now and for future generations.

HMMMA's TEAM VALUES

SAFETY: HMMMA is committed to providing a safe working environment to preserve and enhance the health and personal safety of our Team Members. We will achieve this through the implementation of safety policies, safe work practices, a drug free workplace, and by daily commitment of all Team Members.

QUALITY: HMMMA's commitment to Quality begins with its ability to achieve continuous improvement in its product by always listening to our customers. HMMMA works with its suppliers to ensure high standards are continually maintained. All HMMMA Team Members have an active role in maintaining and improving both the manufacturing process and quality.

TEAM DIVERSITY: HMMMA's success depends on treating each Team Member with dignity and respect and utilizing our Team's diversity to its maximum potential. HMMMA's definition of Team Diversity is accepting our differences and learning from each Team Member's unique perspective in order to achieve a new standard of excellence in society, at home and at work. We must all work as a Team, practicing integrity as we deal with our customers while listening and learning from one another, sharing in our successes, and helping one another succeed.

EFFICIENCY: In order to provide job stability and maintain profitability to HMMMA we must all act effectively to minimize all aspects of waste.

To achieve continuous growth and innovation, each Team Member has the responsibility to find more efficient ways to produce our products for our internal and external customers.

STEWARDSHIP: At HMMA we are committed to the stewardship of our environment and our community. Stewardship simply means managing responsibly. We are committed to conserving energy, recycling, and eliminating elements that could cause harm to the environment. HMMA is also committed to being actively involved in our community in order that it may grow for the benefit of our Team Members and their families.

EQUAL EMPLOYMENT OPPORTUNITY

HMMA is committed to providing an environment that is free of unlawful discrimination and providing equal employment opportunities and promotional opportunities to all Team Members.

Equal employment opportunity means eliminating any practice of unlawful discrimination from employment - in recruitment, application, qualification, hiring, training and education, promotions, corrective action, layoffs, terminations, and all other conditions of employment.

HMMA makes all decisions with regard to employment without discriminating on the basis of race, color, religion, national origin, age, sex, disability, veteran status or any other unlawful basis. Additionally, HMMA will make reasonable accommodations for qualified job applicants and Team Members with disabilities, in accordance with the Americans with Disabilities Act.

HMMA's team relations manager has the appropriate authority and the responsibility to administer the EEO programs with regard to employment and promotional opportunities. Any Team Member who feels he/she has been discriminated against may express such concerns to his/her group leader/manager, the team relations representative, and/or the Human Resources Director. HMMA's team relations manager will be responsible for administering HMMA's EEO policy and insuring that any reported EEO violations are investigated promptly and handled according to all federal and state laws as well as HMMA's policies and procedures.

UNLAWFUL HARASSMENT

In order for all HMMA Team Members to enjoy a work environment free from all forms of unlawful discrimination, including sexual harassment, no Team Member - male or female - should be subject to unsolicited and unwelcome sexual advances or conduct, whether verbal, physical, explicit, or implied. This includes verbal innuendoes, suggestive comments, off-color jokes, gestures or physical contact. Such embarrassing, demeaning or intimidating behaviors interfere with a Team Member's work performance and may create a hostile, offensive work environment. It is also unlawful sexual harassment when submission to sexual

advances is a condition of getting or keeping one's job or when it influences personnel decisions. Furthermore, it is contrary to HMMA policy for any Team Member to be subjected to harassment in the workplace because of race, color, religion, national origin, age, physical or mental disability, veteran's status, or any other unlawful basis. Cases of such unlawful harassment should be reported to your group leader/manager, team relations representative, or the team relations manager.

HMMA's POSITION ON UNIONS

HMMA's team concept and creating a team environment is based on faith in each Team Member and recognizes our commitment to ensure a positive working environment. HMMA has developed its policies, wage structure and benefits plans with our Team Members' best interests in mind. Additionally, HMMA is committed to providing all Team Members with a safe place to work by utilizing state of the art equipment, technologies, as well as work practices to ensure safety.

By joining together as a team, we can accomplish our mutual goals assuring the success of Hyundai Motor Manufacturing Alabama, LLC and providing greater opportunities and job security for all Team Members and their families. Because of HMMA's commitment to every Team Member we do not believe that a third party such as a union is necessary at HMMA.

PURPOSE OF THE HANDBOOK

HMMA's handbook is intended as a summary of HMMA's policies and procedures. We ask each Team Member to read the handbook and familiarize themselves with HMMA's policies and procedures in order for you to understand HMMA's responsibilities to you and your responsibilities to HMMA.

This handbook is not a contract. We ask each Team Member to understand that in order for HMMA to remain competitive in a global market there may be times when changes are necessary. HMMA reserves the right to change policies and procedures when it becomes necessary, either in whole or in part, with or without notice. When it is determined that a policy or procedure needs to be changed, all Team Members will be notified by their manager and/or a video or other printed material to communicate such changes.

If Team Members have any questions concerning these policies and procedures they should ask their group leader/manager. If the Team Member is still unclear about the policies and procedures they should contact their team relations representative for clarification.

EMPLOYMENT STATEMENT

Every Team Member's employment with HMMA is a voluntary one and is subject to termination by you or HMMA at will, with or without cause, and with or without notice, at any time. Nothing in this

handbook or HMMA policies or procedures shall be interpreted to be in conflict with or to eliminate or modify in any way the employment-at-will status of HMMA Team Members.

This policy of employment-at-will may not be modified by any officer or Team Member and shall not be modified in any publication or document. The only exception to this policy is a written employment agreement approved at the discretion of the president or the board of directors, whichever is applicable.

This handbook or any policies or procedures are not contracts of employment.

TEAM MEMBER RECORDS

Team Member records will be kept for information and business purposes only. Any of the following changes to your status must be reported to Human Resources:

- Name, address, or telephone number
- Marital Status
- Birth date, total number of dependents, their relationship to you
- Citizenship status
- Benefit - plan beneficiary designation
- Person(s) to be notified in case of emergency
- Formal education, courses completed, other training or professional skills acquired

Upon request, you may examine your own personnel file and indicate to Human Resources any information you think is inaccurate. Any Team Member wishing to view his/her personnel file must make a written request specifically stating what he/she wants to review and why they want to review the record on file. All personnel files are confidential information and can only be accessed by HMMA Team Members who have authorization. All personnel folders are located in Human Resources.

PROBATION PERIOD

The probationary period is 90 calendar days. This probationary period is a time for evaluation, both by you and by HMMA. The probationary Team Member needs to evaluate HMMA's policies, procedures and overall working environment. The automotive industry is highly competitive. The work is fast-paced, physically demanding, high volume production which demands high standards of quality and safety. Learning to meet performance standards, working in a fast-paced manufacturing environment while meeting the guidelines which govern our conduct, and becoming acquainted with our team approach are also a part of the evaluation new Team Members need to make of HMMA.

HMMA needs to evaluate your progress during this period as well. Three performance evaluations are conducted during the probationary period.

These evaluations occur at the following intervals:

- 1 30 days
- 2 60 days
- 3 85 days

If any new Team Member is off due to an approved leave of absence, the number of days absent will be added to the probation period.

Your overall progress is evaluated during the probation period. Strengths and weaknesses are discussed and helpful feedback regarding your development and progress is given during each of the aforementioned reviews.

In the event progress is less than acceptable or violations of standards of conduct occur, a probationary Team Member's employment may be terminated prior to the end of the 90 day period.

Before any new Team Member is terminated, a review of the facts and approvals by the department manager, team relations manager, director of human resources are required.

Once the probationary period is completed, the new Team Member becomes eligible for the following programs:

Equal Treatment Procedure
Peer Review Panel
Corrective Action Program
Attendance Incentive

LENGTH OF SERVICE

HMMA considers "length of service" (LOS) as the period of continuous employment, starting from your date-of-hire and applies to all full-time Team Members. Length of service will be broken when a Team Member:

- resigns from employment (leaving the plant without proper authorization is considered voluntary resignation)
- is terminated from employment
- fails to return to work on the day following the end of a personal, medical, military, or other leave of absence, unless unusual conditions or circumstances exist that would prevent the Team Member from returning on the scheduled day
- retires
- fails to communicate with HMMA regarding an absence of three (3) consecutive days or longer (subject to the Family and Medical Leave Act and regulations)
- is not actively employed with HMMA for 12 consecutive months or length of service, whichever is the lesser.

A Team Member who voluntarily terminated his/her employment, and who is rehired, will not have any prior service restored. The date of rehire

will become the new service date. Computation of service, for retirement purposes and the effect of breaks in service for retirement rights, however, will be determined in accordance with the Employee Retirement Income Security Act of 1974 (ERISA).

Transfer opportunities will be awarded based on LOS. In situations where more than one Team Member has the same LOS, HMMA will use the first letter of the Team Members last name as the tie breaker. If the Team Members last names begin with the same letter, then HMMA will use the second letter as the tie breaker and so on.

Position Advancement Opportunities will be based on qualifications. In situations where more than one Team Member has the same LOS, HMMA will use the first letter of the Team Members last name as the tie breaker. If the Team Members last names begin with the same letter, then HMMA will use the second letter as the tie breaker and so on.

EMPLOYMENT OF RELATIVES

Relatives of Team Members may be employed at HMMA; however, they may not work or come under the direct supervision of another relative. Relatives are defined as those people who are related either by birth, adoption, or marriage.

The employment of relatives at certain levels of HMMA in positions where one might have influence over another will not be allowed.

TEMPORARY WORKERS AND REPLACEMENT WORKERS

HMMA intends to utilize temporary and replacement workers to reduce temporary peaks of excess overtime, perform special projects, and fill vacancies while Team Members are on military leave, personal leave, or medical leave of absence. Use of temporary replacement workers also helps HMMA avoid potential layoffs.

TEAM MEMBER ORIENTATION

HMMA will provide every Team Member with the training needed to understand HMMA's philosophies. Each Team Member will receive an orientation outlining HMMA team concepts, policies, benefits, and all other aspects related to their employment at HMMA.

HOURS OF WORK

Hours of Work

HMMA's normal work week for all production and administrative (non-exempt) Team Members consists of forty (40) hours per week based on an 8 hour work day five days per week. HMMA's normal work week for all administrative exempt Team Members consists of forty-five (45) per week based on an 8 hour work day and 5 hours of casual time per week. All production and maintenance Team Members will rotate shifts every 4 months. Production, maintenance, and administrative shift hours will

be as follows:

SHIFT	SHIFT START TIME	SHIFT END TIME
Production		
1 st Shift	6:30 a.m.	3:15 p.m.
2 nd Shift	5:15 p.m.	2:00 a.m.
Maintenance		
1 st Shift	6:30 a.m.	3:15 p.m.
2 nd Shift	5:15 p.m.	2:00 p.m.
3 rd Shift	10:00 p.m.	6:45 a.m.
Administration		
1 st Shift	8:00 a.m.	4:45 p.m.

There may be times when Team Members will be asked to work irregular hours due to production requirements. Any deviation in HMMA's weekly scheduled hours must be reviewed and approved by the payroll and benefits manager or his/her designee prior to any change in HMMA's normal work schedule. Any permanent adjustment to any HMMA Team Members regularly scheduled work hours must have approval by the director of Human Resources.

BREAKS AND COMMUNICATION PERIODS

Break Periods

HMMA provides all Team Members with two (2) ten (10) minute paid break periods per day. The first break period will be given in the first half of the Team Members shift; the second break period will be given in the second half of the Team Members shift. All Production Team Members will be provided specific time for each of the described breaks. Due to the nature of Maintenance Team Members responsibilities their breaks will be given at their convenience. In order to allow Administrative Team Members the ability to maintain the continuity of their responsibilities they may take their breaks at their convenience.

There will be times when HMMA schedules overtime. In these situations the Team Member will be given a 5 minute break for every hour of scheduled overtime. These breaks must be given at the end of the eighth hour of work.

Communication Period

Each Team will have a five minute paid communication meeting at the beginning of each shift. This meeting is for the manager, group leader, or team leader to communicate important information to the team.

ATTENDANCE

Regular attendance is the cornerstone for the success of HMMA. A Team Member's absenteeism can reduce the quality and effect of the overall efficiency of HMMA's operations, as well as cause hardship on fellow Team Members who report to work regularly. Regular attendance

is every Team Member's responsibility, and every Team Member is expected to be on the job, on time, every scheduled workday.

The minimum acceptable standard of attendance is 98%.

Any scheduled workday missed is considered an absence. However, work time missed due to holidays, scheduled vacations, catastrophic event, jury duty, military duty, bereavement leave, short-term disability, work-related injury or illness, personal leave of absence and FMLA leave shall not be counted as an absence and are not cause for corrective action.

If a Team Member is absent due to a catastrophic event that results in a legally declared emergency which results in the closure of all major roads in the Team Member's county of residence, or if a Team Member must drive through such a county on the way to work, such absences will not count against the Team Member's attendance for the purpose of calculating the acceptable standard of attendance, nor be cause for corrective action. Final approval as to the declaration of a "Catastrophic Event" shall be made by the director of Human Resources.

Team Members who are not in their work area ready for work by their scheduled starting time will be counted as one-half day absent for calculating attendance only, excluding the following events:

A verifiable catastrophic event such as an accident causing road blockage of major highways, a major weather-related closure of roads, or other acts of God which result in Team Members being tardy will be evaluated on a case by case basis. If it is determined by HMMA that there is a significant adverse impact on HMMA Team Members, the tardy shall not affect a Team Member's attendance record.

Team Members who leave prior to the end of their scheduled shift (including overtime hours) with their group leader's and/or manager's permission are considered to have left early. A leave early will be considered as one-half day of absence for purposes of attendance calculation.

Any situation where a Team Member leaves the facility during scheduled work time (including overtime whether scheduled or voluntary) **without** their group leader, manager, senior manager, or any other member of management's **authorization**, the Team Member **will be considered to have voluntarily resigned** from his/her employment at HMMA.

Attendance will be calculated using a rolling calendar year using the following formula:

- Calculate the number of scheduled workdays. Scheduled workdays will include all excused scheduled workdays.
- Calculate the number of unexcused workdays.
- Subtract the number of unexcused workdays from the number of scheduled workdays and divide the remainder by the number of scheduled workdays to arrive at the Team Member's attendance percentage.

o Example:

237 Scheduled workdays
 - 5 unexcused workdays
 232/237 = 97.9%

When a Team Member's attendance falls below 98% at any time during the first year or subsequent years of employment during any rolling twelve-month period, corrective action will be considered. The rolling twelve-month period is a 365-day period.

Every Team Member is expected to notify his/her group leader and/or manager, in advance, of any known absence or future absence. When an absence is not known in advance, the Team Member must notify his/her group leader and/or manager 30 minutes prior to the start of the shift.

Accumulative absences that result in a Team Member's attendance percentage falling below 98% may be cause for corrective action.

The following will be considered:

- Cause
- Frequency
- Patterns
- Failure to report
- Time pattern of reporting

A Team Member that does **not** communicate to his/her group leader and/or manager regarding his/her absence for a period of three (3) consecutive days or longer is considered to have voluntarily resigned his/her employment at HMMA.

All Team Member Attendance records will be maintained by the group leader and/or manager. Any corrective action necessary is taken by the group leader and/or the manager. The appropriate team relations representative will be in attendance.

The corrective action process is intended to help Team Members correct any attendance problems. However, if the Team Member's attendance continues to be unacceptable it could result in further corrective action up to and including termination.

When a Team Member's attendance percentage falls below the acceptable standard, corrective action may be considered. Corrective action is not automatic. Each Team Member's attendance record will be reviewed based on its own merit, and the circumstances in each case are considered. However, when corrective action is taken, the following steps must be followed:

- 1 Informal Discussion
- 2 Formal Discussion
- 3 Commitment Discussion
- 4 Decision Leave

The team relations representative will be consulted for guidance at each step of the aforementioned corrective action steps. The team relations representative will also attend each step as it occurs.

When corrective action is required beyond the four steps above, the Team Member's group leader and/or manager will contact the team relations manager and request a review of the Team Member's record for termination. No termination will take place unless the action is reviewed and approved by the team relations manager, section manager, and director of Human Resources.

WORK WEEK

HMMA's work week begins at 12:01 a.m. Monday and ends on Sunday at 11:59 p.m.

OVERTIME

Non-exempt Team Members

Due to the nature of the automotive industry there will be times when we will be required to work overtime in order to meet our customer's needs. Overtime will be paid in one-tenth hour increments; any overtime worked will be paid during the normal pay cycle and included in the regular payroll check.

Overtime is calculated using the base rate of pay plus shift premium and team leader premium, if applicable. Overtime will be paid at 1.5 times the Team Member's regular rate of pay for any time worked in excess of eight hours during the normally scheduled work day as long as 40 hours of work has been achieved for that work week. Team Members will be paid at 1.5 times their regular rate of pay for time worked on Saturday or the sixth work day. Additionally, Team Members will be paid 2 times their regular rate of pay for time worked on Sunday or the seventh day of continuous work. Team Members who work on an approved HMMA holiday will be paid at 2 times their rate of pay. Vacation time will count as hours worked when calculating overtime.

Exempt Team Members

Assistant managers and specialist Team Members wages are based on a 40 hour work week and 5 hours of casual overtime. Casual overtime is time that is worked without approval. Assistant managers and specialists will be paid at 1.5 times their calculated regular hourly rate for all pre-approved overtime.

In situations where the assistant manager and/or specialist Team Member is required to work because of scheduled production overtime they will be paid at 1.5 times their calculated hourly rate. Due to the fact that production overtime is scheduled and the assistant manager and/or specialist is required to work in order to support production needs the overtime will be considered as pre-approved. Additionally, the casual overtime rule

will not apply in this situation.

PAY

HMMA reviews wages each year and makes appropriate changes to the wage scale based on several factors, such as: automotive industry, HMMA's performance, and the cost of living. Each Production and Maintenance Team Member will receive a base rate when joining the HMMA family and will receive a rate increase periodically over a 24 month period until they reach the top pay rate.

PAYDAY

All Team Members will be paid on Tuesday on a biweekly basis.

DIRECT DEPOSIT

All HMMA Team Members are required to use direct deposit. Each Team Member will receive an advice stub which will itemize pay and deductions in detail. Any questions regarding direct deposit should be directed to the Payroll and Benefits Department.

QUESTIONS REGARDING PAY

If any Team Member has a question regarding pay, they are to contact their manager/assistant manager/group leader. The manager/assistant manager/group leader will notify the payroll department of any issues concerning pay and report back to the Team Member or arrange a meeting with the payroll department for the Team Member.

"CALL IN" PAY

HMMA will pay for a minimum of four hours work at the regular straight time hourly rate for those Team Members who are called to work at a time other than their regularly scheduled work hours (before or after, but not continuous with their regularly scheduled shift). If there is at least four hours work available and the Team Members are given the option to work less hours, they will be paid only for the hours worked if they exercise the option to leave early.

"REPORT IN" PAY

If the scheduled production is canceled due to any emergency, prior to the start of the shift and at least one hour of notification has been provided to the Team Members, no work will be available and no pay made to the Team Members.

If the scheduled production is canceled due to any emergency and less than one hour of notification is provided, Team Members will have the option of leaving and receiving pay only for the time worked or staying for a total of four hours. If the Team Member elects to remain at work, he or she must leave the plant at the end of this period.

If the notification of canceled production is made after four hours of work from the normal scheduled starting time of the shift have been completed, Team Members will have the option of leaving and receiving pay only for the time worked or staying until the end of the regular shift. Team Members that have not been given their options and have been forced to leave will be paid for 8 hours.

Anytime a Team Member volunteers to go home early or is required to go home early, the Team Member may elect to use any available vacation time to make up for lost income. This time will always be excused and the lost time will not count against the Team Member's attendance.

STATEMENT OF EARNINGS

Each Team Member will receive a yearly statement of earnings. The yearly statement of earnings is known as a W-2 Withholding Statement which provides the amount earned and the taxes that have been withheld. The W-2 will be issued in January each year for use in filing income tax forms.

GARNISHMENTS

HMMA respects every Team Member's right to privacy with regard to personal and confidential information. However, HMMA may be required, by law, to withhold a portion of your pay if served with a court notice of a garnishment, wage assignment, wage deduction, or government levy. When situations such as this occur HMMA's payroll department will notify you of any pending action involving such matter that requires a wage withholding situation.

BENEFITS

HMMA benefits are described in the Summary Description Plan.

ATTENDANCE INCENTIVE PROGRAM

HMMA will pay a premium of \$100.00 to non-exempt and exempt Team Member's up to assistant manager for perfect attendance for each 4-week period. All regular, full-time, non-exempt and exempt Team Members up to assistant manager are eligible to participate in the Attendance Incentive Program.

During the probationary period, a Team Member is not eligible to participate in the Attendance Incentive Program. A Team Member becomes eligible the first full 4-week attendance period following the end of his/her probation period.

The Team Member must maintain a perfect attendance record for a four (4) week attendance period to receive an attendance incentive. Perfect attendance is defined as no absences, including tardiness, early leave, lost time including scheduled overtime, or personal leaves.

The only exceptions to this policy are:

- HMMA observed holiday, unless the Team Member is scheduled to work on the holiday
- Scheduled Vacation
- Personal Days (HMMA may require documentation)
- Jury Duty
- Military Leave. Military leave shall be considered in accordance with applicable law.
- Bereavement Leave
- The balance of a shift lost due to an occupational illness/injury.
- Workers Compensation related doctor appointments.
(When a Team Member misses part of a day due to a workrelated injury/illness doctor appointment scheduled by the HMMA Medical Clinic.)
- Any work-related activities away from the plant
- Any medical leave, either work-related or non-work related that is determined to be FMLA
- Any leave that is determined to be FMLA

FMLA

General Provisions

It is the policy of HMMA to grant up to 12 weeks of family and medical leave during any 12 month period to eligible Team Members, in accordance with the Family and Medical Leave Act of 1993 (FMLA). The leave may be unpaid, paid, or a combination of unpaid and paid leave, depending on the circumstances of the leave and as specified in the policy.

A Team Member must have worked for HMMA for 12 months, or 52 weeks. In addition a Team Member must have worked at least 1250 hours during the 12 month period immediately before the date when the leave is requested to commence.

In order for the leave to qualify under the policy, the Team Member must be taking leave for one of the reasons listed:

- The birth of a child and in order to care for that child;
- The placement of a child for adoption or foster care, and to care for the newly placed child;
- The care of a spouse, child, or parent with a serious health condition; or
- The serious health condition of the Team Member.

HMMA may ask for certification of the serious health condition. The Team Member should try to respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification may be provided by using the medical certification form. Request for medical certification must be made in writing as part of

HMMA's response to the Team Member's request for leave.

All Team Members requesting leave under the policy must provide verbal notice with an explanation of reason(s) for the needed leave to their immediate supervisor, who will advise the Benefits Department. If the leave is foreseeable, the Benefits Department may require the Team Member to provide a written request for leave and reason(s) for that leave. Failure of the Team Member to provide a written request for leave cannot be grounds to deny or delay the taking of FMLA leave.

HOLIDAYS

HMMA observes paid holidays each calendar year. HMMA will review the holiday schedule each year and communicate to all Team Members the holiday schedule for the coming year in November. All full time Team Members and team leaders are eligible for holiday pay, which includes shift premium if applicable. All full time Team Members will be eligible for holiday pay as of their first day of employment.

All Team members must work his/her last full scheduled workday before the holiday and the first full scheduled workday following the holiday in order to receive holiday pay.

All non-exempt Team Members and exempt Team Members up to assistant manager will be paid double time for hours worked on a designated HMMA holiday.

VACATION NON-EXEMPT/EXEMPT TEAM MEMBERS

HMMA realizes that vacation is an important benefit for all Team Members. HMMA's intention is to provide Team Members with a means to take a scheduled vacation without loss of pay. Vacation does not apply to holidays, bereavement leave, jury duty or military leave pay. The vacation allowance is granted for the calendar year only. Once it is used for the year, it is not renewed until January 1st of the next calendar year.

A Team Member's vacation eligibility is determined based on his/her length of service with HMMA and is to be used during the calendar year January 1st through December 31st. Any Team Member that has not worked hours for the year in which the vacation is scheduled will not be paid until at least one day has been worked in the qualifying year. Although Team Members must actually perform work in a new calendar year before qualifying for vacation, Team Members may use their vacation in January if it is connected with vacation or a holiday from the previous year. Five vacation days are reserved and must be used during HMMA's summer shutdown. However, a Team Member may use these days prior to shutdown for Family Medical Leave or if the Team Member is scheduled to work the vacation days that are reserved for the summer shutdown period. Anticipated unused shutdown vacation days may not be scheduled for dates before the actual shutdown occurs.

Starting the year of the Team Member's second anniversary, the Team

Member is eligible for vacation according to the following schedule.
(The Team Member's vacation allowance is available as of January 1st each year)

Team Members with:

- Less than one year will receive a prorated vacation based on the following
 - o January – 10 days vacation
 - o February – 9 days vacation
 - o March – 8 days vacation
 - o April – 7 days vacation
 - o May – 6 days vacation
 - o June – 5 days vacation
 - o July – 4 days vacation
 - o August – 3 days vacation
 - o September – 2 days vacation
 - o October – 1 days vacation
 - o November & December – 0 days vacation
- Beginning January of the next year Team Members will receive:
 - o 1st year – 10 days vacation
 - o 2nd year – 11 days vacation
 - o 3rd year – 12 days vacation
 - o 4th year – 13 days vacation
 - o 5th year – 14 days vacation
 - o 6th year – 15 days vacation
 - o 7th year – 16 days vacation
 - o 8th year – 17 days vacation
 - o 9th year – 18 days vacation
 - o 10th year – 19 days vacation
 - o 11th year – 20 days vacation
 - o 12th year – 21 days vacation
 - o 13th year – 22 days vacation
 - o 14th year – 23 days vacation
 - o 15th year – 25 days vacation

A Team Member's vacation pay is based on the Team Member's regular base pay at the time, but not more than eight (8) hours per day. Any vacation will include any shift differentials a Team Member is currently receiving. Vacation cannot be taken on Saturdays, Sundays, or holidays.

SCHEDULING VACATION

In order for HMMA to plan proper coverage for Team Member vacations, the scheduling period for the subsequent year's vacations will be during November and December as follows:

- Full week and single days of vacation for January and/or February must be scheduled between November 1 and

November 30 of the preceding year.

- Full weeks and single days of vacation for the remainder of the year - March through December - must be scheduled between December 1 and December 22 of the preceding year.
- Full weeks take precedence over single day vacation requests.
- Single days take precedence over 1/2 day vacation requests.
- When two (2) or more Team Members with the same length of service request the same dates for time off, the last letter of the Team Members' names will be used to determine who has first preference.

SUMMER SHUTDOWN

HMMA reserves the right to schedule a plant shutdown each year. When a plant shutdown is planned, HMMA will inform Team Members of the planned shutdown by the end of December the prior year. HMMA reserves the right to require the Team Members to use up to 5 days of his or her vacation if needed during the shutdown period.

There may be occasions when it is necessary to schedule work during HMMA's summer shutdown period. When it is necessary to schedule work, each department will notify Team Members 30 days prior to the planned summer shutdown, which they will be required to work.

Procedure

The manager and/or group leader will solicit volunteers and/or require Team Members to work during the shutdown period using the following criteria:

- **Soliciting Volunteers:**
 - o Solicit volunteers based on length of service for shutdown days that are not holidays. The Team Member volunteering with the longest length of service will be awarded the work. If two or more Team Members volunteer with the same length of service, the first letter of their last names will determine which Team Member is awarded the work.
 - o If the voluntary work being offered is an HMMA holiday, the manager and/or group leader will use the overtime equalization chart to determine which Team Member will be awarded the overtime, as stated in the Equalization of Overtime Policy.
- **Required Work:**
 - o When requiring Team Members to work on shutdown days that are not holidays, start from the bottom of the length of service list until the required manning is obtained.
 - o All Team Members who volunteer or that are required to work during an HMMA shutdown that involves reserved vacation days will be eligible to reschedule

the vacation days.

- **Skills Requirement**
 - o In overtime situations that require a specific skill and or qualifications to accomplish this job task. Skill will take precedence over length of service.
 - o If more than one Team Member has the skill and qualifications, overtime equalization should be used as a determining factor and then length of service if applicable.

Medical Leaves During Shutdown Periods

All Team Members that are on an approved medical leave, or personal leave during the shutdown period will be paid for any vacation reserved for the shutdown period, and will not be eligible to reschedule vacation days reserved for the shutdown period.

Canceling Vacation

Team Members who choose to cancel their scheduled vacation must notify their manager and/or group leader as soon as possible. Team Members may only cancel a scheduled vacation one time per scheduled year.

When a Team Member cancels a scheduled vacation week or day, he/she may reschedule the canceled vacation to any open block of available vacation time. The opportunity for the canceled week or day will be posted in a central area for the entire group or department, whichever is applicable, for 48 hours following the cancellation.

Personal Days

All Team Members will be given three Personal Days each year. HMMA encourages its Team Members to schedule their Personal Days in advance if possible. However a Team Member may use Personal Days at their discretion for emergency situations or unforeseen circumstances (HMMA may require documentation) that prevent them from reporting to work, leaving early, or reporting late to work.

If a Team Member is already at work and needs to leave, the Team Member must contact his/her manager and/or group leader and get approval before leaving the plant. If the Team Member does not contact his/her manager and/or group leader or another member of management and leaves without proper authorization, he/she will be considered to have voluntarily resigned.

Personal Day Limitations

- Personal Days were not developed to extend vacation periods or to be utilized in lieu of vacation
- Personal Days were not intended to be used to extend a holiday period, however if a verifiable unforeseen circumstance were to arise the Team Member would be

allowed to utilize a personal day to cover his/her absence.

- Can not be used during the New Hire 90 day probation period.
- If a Team Member uses a Personal Day on a Saturday or Sunday for a verifiable emergency he/she will not be eligible for compensation at a premium rate, but will be compensated at a straight time rate and may be required to provide documentation.

Scheduled Personal Days

- Must be scheduled in advance of the day taken (before close of previous shift).
- Must be approved in advance by immediate supervisor (may also be denied by immediate supervisor if manning not sufficient).
- Does not require documentation or explanation.
- Scheduled Personal Day will not effect attendance percentage.
- Scheduled Personal Day will remain eligible for attendance bonus.
- Scheduled Personal Day before a holiday will not disqualify holiday pay.
- Scheduled Personal Day before "scheduled Saturday/Sunday" does not allow for missing Saturday/Sunday if scheduled.
- Scheduled Personal Day can be used on production Saturday/Sunday (or day that team member is scheduled to work).
- Scheduled Personal Day will be paid at straight time (regardless of day requested).

Unscheduled Personal Days

- Must only be used for emergency purposes.
- Emergency reason may be required to be documented.
- Documented emergency will still be eligible for attendance bonus.
- Un-documented emergency will disqualify for attendance bonus.

- Non-emergency use will disqualify for attendance bonus.
- Un-documented/non-emergency use before a holiday will disqualify holiday pay.
- Un-documented/non-emergency use will not count against attendance percentage.
- Un-documented/non-emergency use to cover tardy will disqualify attendance bonus.
- Utilizing to cover tardy will not count against attendance percentage.
- Unscheduled Personal Day can be used on production Saturday/Sunday (or day that team member is scheduled to work).
- Unscheduled Personal Day will be paid at straight time (regardless of day requested).

Transfers

If a Team Member transfers to a new Team, the Team Member will be required to reschedule his or her vacation.

Unscheduled Vacation

A Team Member's vacation allowance does not accumulate and must be taken in the calendar year in which it is earned. Team Members will be paid for any unscheduled vacation on the first pay period in February of the following year.

Vacation Eligibility

All regular, full time, exempt Team Members are eligible for vacation.

Vacation is earned by the Team Member each January. In order for the Team Member to be eligible for vacation he/she must have reported for work in the year of eligibility.

Requests for vacation days must be submitted to the supervisor one week in advance. The supervisor is required to approve or deny the request within 48 hours.

Unused Vacation Time

A Team Member will not be allowed to carry over unused vacation into the next year. Team Members that have vacation days remaining after the close of the calendar year (December) will be paid for any remaining vacation time by the first pay period in February.

Upon separation from employment with HMMA, the Team Member's vacation will be prorated and the Team Member will receive pay for any unused vacation during the year in which the termination occurs. If a

Team Member should die during the term of employment, pay for unused vacation will be paid in a lump sum to the Team Member's beneficiary (as designated for retirement plan).

A Team Member's vacation pay is based on the Team Member's regular base pay at the time, but not more than eight (8) hours per day. Any vacation will include any shift differentials a Team Member is currently receiving. Vacation cannot be taken on Saturdays, Sundays, or holidays.

Personal Leave

In an effort to recognize the need of Team Members who require time off in addition to personal days or vacation, HMMA may consider a personal leave of absence without pay for up to a maximum of thirty (30) days.

All regular permanent, full time Team Members employed by HMMA for a minimum of ninety (90) days are eligible to apply for an unpaid personal leave of absence. Departmental requirements will all be taken into consideration before a request is approved. Requests for unpaid personal leave may be denied or granted by HMMA. Approvals of the immediate supervisor, department director, and Director of Human Resources are required. All personal leaves are unpaid leaves.

An eligible Team Member should submit a request in writing to his/her immediate supervisor.

A Team Member is required to return from the unpaid personal leave on the originally scheduled return date. If the Team Member is unable to return, he/she must request in writing the extension of the leave.

If HMMA does not extend the leave, the Team Member must then return to work on the originally scheduled return date or be considered to have voluntarily resigned from his or her employment. Extensions of leave will be considered on a case-by-case basis.

BEREAVEMENT LEAVE

The bereavement leave policy was developed to provide Team Members with a suitable period of time away from work, with pay, in order to properly attend to the arrangements required when a death in the Team Member's family occurs.

The Team Member's group leader or management Team Member should be immediately notified when such leave is needed.

A bereavement leave of absence, with pay, for a period not to exceed five workdays shall be granted to a Team Member when death occurs to the Team Member's:

- parent
- stepparent
- spouse

- child or stepchild

A bereavement leave of absence, with pay, for a period not to exceed three workdays shall be granted to a Team Member when death occurs to a member of a Team Member's family.

For the purpose of this policy, the Team Member's family shall be defined as follows:

- In the event of a miscarriage, if a death certificate is issued, then the above policy will apply
- Mother-In-Law/Father-In-Law
- Sister/Brother
- Grandparent/Grandchildren
- Stepsister/Stepbrother
- Grandparent-In-Law
- Half-sister/Half-brother
- Great Grandparents
- Son-In-Law/Daughter-In-Law

Exceptions may be made to the "Team Member's family" provisions if the deceased was a relative or foster parent and the Team Member resided with or was reared by the deceased.

In the event of the death of a Team Member's relative not mentioned above the Team Member will be excused, with pay, for up to one day (8 hours). This applies to the following family members only:

- Aunts
- Uncles
- First cousins
- Nephews
- Nieces
- Brother-In-Law and Sister-In-Law

When a Team Member is on vacation and a member of the Team Member's family dies, the time off will be considered as bereavement leave. Vacation time missed because of the death may be utilized at a later time. If an official HMMA holiday occurs during time considered as bereavement leave, the Team Member's bereavement will begin the day following the holiday. In addition, Saturdays, Sundays and holidays are not considered as bereavement. Any Team Member who is off on a Friday for an approved bereavement leave will not be expected to work on the Saturday or Sunday after the approved bereavement leave.

All bereavement leaves of more than one day must be taken on consecutive work days. (For example: Tuesday, Wednesday, Thursday, or Friday, Monday, Tuesday).

A Team Member who leaves during his or her shift due to the death of a family member that qualifies for bereavement leave will receive eight hours of total pay for that day. By leaving during the shift, the Team

Member has started his/her bereavement leave and the partial day will count as a full day of the allowable bereavement leave.

HMMA may request documentation for verification to be retained with the leave of absence request.

JURY DUTY

HMMA will provide income protection while a Team Member carries out his/her civic responsibility regarding jury duty.

Upon receipt of notification from the state or federal courts of an obligation to serve on a jury, the Team Member should notify his/her supervisor. The Team Member is required to provide copies of the jury subpoena or jury summons to his/her supervisor and to the Payroll Department.

Any Team Member appearing as a plaintiff, defendant, and/or witness in any legal proceeding, or for other appearances related to legal proceedings or court cases (e.g. deposition testimony), whether or not pursuant to a court-issued subpoena will not receive paid time off. Vacation, personal time, or unpaid time should be used for these instances.

MILITARY LEAVE

Team Members who are inducted into the U.S. Armed Forces or who are reserve members of the U.S. Armed Forces or state militia groups will be granted leaves of absence for military service, training, or other obligations in compliance with state and federal laws. These Team Members may use accrued vacation leave but are not required to do so. At the conclusion of the leave, Team Members generally have the right to return to the same position they held prior to the leave or to a position with equivalent seniority, pay and benefits. HMMA will pay the difference between military pay and regular wages/salary for up to one month. Team Members are requested to notify their supervisor as soon as they are aware of the military obligation. Questions regarding HMMA military leave policy, applicable state and federal laws, and continuation of benefits should contact the Human Resources Department.

TEAM WEAR

The purpose of *Team Wear* is to support the spirit of team work, build open communication, ensure safety for Team Members, protect product finish, ensure proper security and identify visitors.

Team Wear will be worn by all Team Members in a neat and appropriate manner during normal business hours, except when a special business meeting requires other clothing. *Team Wear* may be worn to and from work. The *Team Wear* concept also applies to interns & co-op Team Member who are issued *Team Wear* by HMMA.

Other HMMA apparel is not considered *Team Wear* and should not be worn during normal working hours. Likewise, jackets, sweaters and

sweatshirts not issued or purchased through the *Team Wear Collection* should not be worn over *Team Wear* during business hours.

The color choices at the present time are:

- pants/skirts in khaki, navy, grey, olive and black
- shirts in tan, white, blue & blue/white, herringbone, green, slate blue, denim, khaki, and black.

Team Members will also have choices of sweatshirts and sweaters which are also embroidered with the company logo.

Skirts may be hemmed to no more than 3 inches above the top of the knee.

All alterations will be done at Team Member expense. Safety issues and mutilation hazards for clothing should be kept in mind when altering clothes.

Team Wear is provided to Team Members once each 18 months. During orientation each Team Member will order his/her initial set of:

- 5 pants/skirts
- 5 tops
- 1 hat
- 1 belt

Every 18 months Team Members will receive a full replacement set of *Team Wear* due to wear and tear. Team Members will also have the option to purchase, at their own expense, pants/skirts in the same approved colors as those provided by HMMA.

Jeans (blue, black or any other color) are not considered appropriate for work at HMMA and are not to be worn during normal working hours. All items must conform to the Team Wear concept. Safety issues and protecting the finish of the vehicle should be taken into consideration when choosing Team Wear (100% cotton clothing is required in some areas and loose clothing is not allowed on production lines).

Team Wear which is damaged during work hours at HMMA will be replaced.

Maternity wear is available upon request. The choices will include a navy jumper, navy slacks and a white blouse. The jumper must be dry cleaned at the Team Member's expense. Due to changes in sizes, maternity clothing may be requested twice during pregnancy. Team Members may choose to wear maternity clothing of their own choosing (and expense) if the colors match those outlined above.

Additional HMMA apparel from the HMMA Team Wear Collection may be purchased by the Team Member through the supplier for Team Member use only. Team Wear may not be purchased for family members, however, Hyundai logo items may be purchased through the HMMA

Gift Shop. Team Members will bear the expense of tax and shipping for individual purchases.

Note: No pins, buttons, or other items may be worn on HMMA Team Wear unless it is issued by HMMA. Furthermore, only HMMA issued hats may be worn at HMMA. All HMMA head wear must be worn as issued and may not be altered. The only acceptable alteration is the addition of the Team Members name.

SAFETY

HMMA's goal is to eliminate potential hazards before they become an accident. Every Team Member is responsible for safety not only for themselves but for others. We can all prevent incidents by avoiding unsafe acts, reporting unsafe acts and conditions and by learning and following the policies and procedures that have been developed to keep our facility safe.

Safety Committees

HMMA's safety committees provide Team Members an opportunity to participate in safety improvements in their areas. The safety committees will conduct area audits, identify safety training needs and support safety awareness programs in the facility.

Safety Wear

As part of HMMA's total Team Member safety program, special clothing and other apparel designated by department managers and the Safety/Environmental Department must be worn by Team Members, when and where required, to help guarantee your personal safety.

Hard Hats and Bump Caps

Hard hats (heavy-duty, impact-resistant hats) must be worn in work areas where there is danger of falling objects or hazardous conditions. Bump caps (lighter weight hats) may be required in some areas as an additional means of protection. Team Members are reminded to obey signs or directions in areas where such protective devices must be worn.

HMMA will issue all bump caps and hard hats. Only HMMA-issued hats may be worn. Additionally, safety caps may not be altered in any way. The only exception is the addition of the Team Members name.

Shoes

HMMA safety-approved shoes are required in many areas of the plant and are necessary to safeguard your health. HMMA has established a specified dollar amount it will pay toward the purchase of safety shoes. Contact the safety department for the exact amount.

Safety Glasses

All Team Members, vendors and visitors at HMMA are required to

wear OSHA-approved safety glasses in the production areas. Safety glasses are provided by HMMA and can be ordered through the Safety Department. Eye examination charges are not covered under this program. Safety glasses do not have to be worn when entering, exiting, or during breaks and lunch.

Personal Protective Equipment (PPE)

When it is required, use of special safety equipment by Team Members shall be regarded as a condition of employment. Further information will be given to you during your training regarding equipment needed for your job. If you are not sure of the PPE required in your work area, please contact your group leader.

Housekeeping

Good housekeeping habits allow all HMMA Team Members to be safe in their work areas as well as the ability to work more efficiently. Each Team Member is responsible for maintaining their work area. If we allow dust and dirt to accumulate or if we do not regularly maintain the work area safety hazards may occur. Team Member is responsible for disposing of trash both inside and out into the proper receptacle. Failure to adhere to the aforementioned is considered to be a performance issue and could result in corrective action.

Lock-out/ Tag-out Procedures

The safety of all HMMA Team Members is a primary concern. In order to protect all Team Members from danger, we have established a Lock-out/Tag-out procedure to protect all those who enter machinery, work within machinery, or use machinery as part of their job duties at HMMA. Only authorized Team Members who have completed lock-out/tag-out training may work within machine guarding or enter machinery. Strict compliance with the lock-out/tag-out procedures and rules are required from all HMMA Team Members and contractors at all times.

HMMA will issue each trained and authorized Team Member a personal safety lock along with an identification tag. The Team Members lock and tag is required to be properly attached to the lock-out devices located on each piece of machineries control panel before entering. In situations where multiple persons must enter a piece of machinery requiring lock-out/tag-out, each person must attach his/her lock and tag to the lock-out device with a multi-lock hasp. All locks and tags must be removed before the equipment is restarted.

Because of the differences in each machine or piece of equipment, the Team Member should learn the proper method of locking and tagging each piece of equipment they operate, repair or maintain. If a Team Member is unsure about the procedures for locking out the equipment, the Team Member must ask their manager and/or call the Safety Department for assistance.

SPECIAL AUTHORIZATION PERMITS

Because of the varied types of work required, certain types of work require special authorization and/or training. Areas designated as confined space or certain welding operations require a permit prior to beginning work.

Confined Space Entry Permits

When a location is designated a "confined space" it requires specialized training before a Team Member can work in the designated area. Confined spaces present characteristics of an atmosphere or have the potential for serious safety and/or health hazards.

Lack of oxygen or contamination of the air is possible in confined spaces. No Team Member or contractor is allowed to enter a "permit required" confined space unless they have received the proper training and the area has been adequately tested and a confined space entry permit has been issued. When training and/or a permit is needed contact the Safety Department to obtain training and/or a permit.

Hot Work

There are areas within our facility that are susceptible to fire and explosions. Because of these dangers Team Members planning to do "hot work" in these areas must obtain a hot work permit before performing cutting, welding and/or spark producing work. Hot work being done on welding lines and in authorized maintenance areas does not require a hot work permit unless otherwise posted. All hot work permits must be obtained from the Safety Department.

Area Specific Safety Rules

Individual areas within our facility will have area specific safety requirements. These include but are not limited to:

- Rules for the proper use of different kinds of tools and equipment
- Rules for performing different kinds of operations
- Proper techniques for lifting or performing other physical activity

Each department will be responsible for communicating the safety rules that apply to your particular job function. If a Team Member is unsure of the safety requirements for their work area they are to contact the manager for the department or the Safety Department.

SECURITY

Foreign Trade Zone (FTZ)

HMMA is designated as a FTZ under the Foreign Trade Zone Act of 1934.

The FTZ makes it possible for HMMA to receive parts from other countries without paying the required duty tax until the parts leave the FTZ as part of a completed vehicle. Operation of the FTZ is under the supervision of U.S. Customs Service and therefore HMMA is required to operate under stricter security than you may be accustomed.

Video Surveillance

At HMMA the security of our Team Members as well as our product is important to us.

In order to ensure our Team Member's safety, protect our product, and maintain the FTZ zone, HMMA uses video surveillance throughout our facilities.

HMMA Identification Badges

HMMA identification ("ID") badges are issued on the first day of employment. All HMMA Team Members are required to wear their ID badges, and have them visible when entering and exiting HMMA. Team Members do not have to have their badges visible when they are in their assigned work area. However, the Team Member must wear, and have their badge visible when traveling between HMMA facilities. Personal identification from your ID badge is an FTZ requirement. Security personnel may periodically inspect badges. All Team Members will be required to return his/her badge to security on their last day of employment. If any Team Member loses their identification badge, the Team Member is to notify Security immediately so that a new badge can be issued and activated.

Parking/Traffic Control

The ability to park on HMMA premises is allowed during scheduled work times. At HMMA we have reserved parking spaces for visitors as well as for the disabled. Here at HMMA, all other Team Members have equal access to parking and parking spaces on a first come first serve basis. All Team Members are responsible for parking in the proper parking spaces and for respecting the visitors and disabled parking areas.

Additionally, HMMA has a posted speed limit as well as designated lanes which allow for smooth traffic flow in and out of the facility. All Team Members are required to follow all posted limits, as well as safe driving habits, to ensure the safety of all HMMA Team Members and visitors. Any Team Member found in violation of these rules is subject to corrective action up to and including termination.

CAREER OPPORTUNITY PROGRAM

The purpose of the HMMA Career Opportunity Program (COP) is to encourage promotion from within HMMA and to ensure that all qualified Team Members have an equal opportunity for job advancement. This program is designed to provide an effective means of communication to Team Members of specific job vacancies within HMMA. This policy will

be administered by the Employment Department.

It is the intent of HMMA to fill job vacancies from within the organization when Team Members with the skills and qualifications for the positions are available. In the event a posted position cannot be filled from within HMMA due to a lack of qualified Team Members external sources can and will be utilized to fill the position. Job advancement and transfers will be made without regard to race, color, religion, sex, age, national origin, veteran status, or disability.

This program will be used for exempt and non-exempt positions excluding the following: production Team Member, team leader, entry level support staff Team Member, management Team Member and above.

A manager may fill a vacancy internally within his/her section and within the same salary classification without posting the position by realigning a Team Member into the position. The position vacated will then be posted.

All full-time Team Members who have completed the probationary period at HMMA are eligible to apply for vacancies posted under this policy. In the interest of stability and continuity, a Team Member who accepts a promotion will be expected to remain in the new position for a period of twenty-four (24) months and will be prohibited from applying for another promotional opportunity during that twenty-four (24) month period.

A Team Member will be disqualified from consideration for any Career Opportunity Posting if he/she has active corrective actions at the Formal Discussion level or above. Any conflict with the Employment of Relatives Policy may also prohibit a Team Member from being considered eligible for the posted position.

Vacancies to be filled by the Career Opportunity Program will be announced via closed circuit television and/or on the Career Opportunity Bulletin Boards. Vacancies will remain posted for five (5) working days following the first date of the announcement.

All Team Members who have filed a Career Opportunity Application but do not meet the minimum eligibility requirements will be notified in writing by the Employment Department. Candidates may be contacted for a screening interview to verify and/or clarify experience. Applicants not selected will be notified of their status, in writing, by the Employment Department.

A Team Member who has been awarded job advancement will be transferred within thirty (30) days of the selection decision. The Director of Human Resources must authorize any decision to delay the transfer.

TRANSFERS

HMMA wants all of its Team Members to become multi-talented. In order to achieve this goal HMMA Team Members will have the ability to

request an assignment to another work area of their choice. Not only does this allow the Team Members to gain important job experience but it also helps HMMA to develop Team Members for other responsibilities.

Team Members with permanent medical restrictions, either off work or on a temporary work assignment, will be considered for placement, with or without accommodation, as required by the Americans with Disabilities Act. Placements of Team Members with permanent medical restrictions will take priority over transfer requests.

When a vacancy is declared, it shall be posted for department or group transfer, provided the position cannot be filled by a Team Member with permanent medical restrictions. This vacancy will be posted plant wide denoting the department and group. The requesting eligible Team Member with the longest length of HMMA service shall be placed in the open position. The job posting will be posted in designated areas of the facility for a period of three (3) working days, excluding weekends and holidays. All requests received by the end of the posting period shall be reviewed to determine which candidate has the longest length of service and is eligible for transfer.

The requesting Team Member must be a full-time, non-probationary Team Member with at least 12 months of HMMA service as of the date of the posting. The Team Member requesting transfer must not have transferred within the last twelve (24) months.

Any corrective action at the Commitment Discussion level or above will result in the denial of a Team Member's transfer request or promotional request. When two or more Team Members have identical length of service dates, the Team Member identification number will be used as the tie breaker. The Team Member with the lowest Team Member identification number will be awarded the transfer. Team Members will not be considered for any transfer that would result in conflict with the HMMA Employment of Relatives Policy.

To assure that adequate skill levels are maintained in each department, no more than 5% of the authorized full-time staffing in a department will be allowed to transfer out of the department in a calendar year.

Any Team Member who submits and is awarded a transfer request must accept the transfer. The Team Member who receives a transfer shall be prohibited from another transfer for a period of twenty-four (24) calendar months. This period shall begin as of the actual date the award of transfer notification is given. A Team Member who transfers will be required to reschedule vacation time previously approved. A Team Member who transfers to a new department will assume high overtime hours on that team for overtime equalization purposes.

SOLICITATION, DISTRIBUTION, & POSTINGS

HMMA prohibits the solicitation, distribution and posting of materials on or at HMMA property by any Team Member or non-HMMA Team

Members, except as may be permitted by this policy. The sole exceptions to this policy are charitable and community activities supported by HMMA and HMMA-sponsored programs related to HMMA products and services.

Non-HMMA Team Members may not solicit Team Members or distribute literature of any kind on HMMA premises at any time. Team Members may only admit non-HMMA Team Members to work areas with HMMA approval or as part of a HMMA-sponsored program. These visits should not disrupt workflow. The HMMA Team Member must accompany the non-HMMA Team Member at all times. Former Team Members are not permitted onto HMMA property except for official company business. Team Members may not solicit other Team Members during work times, except in connection with a HMMA-approved or sponsored event. Team Members may not distribute literature of any kind during work times, or in any work area at any time, except in connection with a HMMA-sponsored event.

The posting of materials or electronic announcements are permitted with approval from the Director of Human Resources. All team communication boards located in team areas are intended for team related instruction and production-related materials only. Violations of this policy should be reported to the Director of Human Resources.

TEAM MEMBER WORK CONDUCT

It is the policy of HMMA that Team Members maintain a working environment that encourages mutual respect, maintains fellow Team Members dignity, promotes civil and congenial relationships among Team Members and is free from all forms of harassment and violence.

Team Members are expected to conduct themselves in an appropriate manner as judged by a reasonable person at work, at all HMMA functions, and also in the community. Team Members have the right to conduct their work without disorderly or undue interference from other Team Members. HMMA prohibits Team Members from violating the rights of their co-workers.

HMMA encourages a congenial work environment of dignity and respect as well as professionalism. Therefore, HMMA prohibits Team Members from intentionally harming or threatening to harm other Team Members, clients, vendors, visitors or property belonging to any of these parties.

Team Members are responsible for maintaining their work area in a neat and professional manner.

Team Members are responsible for assuring the security of HMMA confidential/proprietary material in their possession and similarly maintaining the security of HMMA provided equipment. Team Members concerned for the security of their work area or equipment must inform their supervisor of such concerns.

HMMA reserves the right to search locked, unlocked and/or publicly used HMMA property at any time without consent. HMMA may request a search of personal property at the worksite or locked HMMA property assigned to an individual if there is reasonable suspicion that evidence of illegal or prohibited activities resides therein. Refusal of such a request may result in corrective action up to and including termination.

CORRECTIVE ACTION

The intent of corrective action is to provide a consistent way to address unacceptable attendance, performance, or conduct. Corrective action is designed to allow Team Members formal notice and the opportunity to correct any performance deviations from HMMA's acceptable standards.

The following corrective action procedures will be taken by HMMA's management in order to address a Team Members' inability to meet HMMA's standards regarding attendance, performance, or conduct. Corrective action applies to exempt Team Members at the specialist level and below, non-exempt administrative Team Members and all production Team Members, including maintenance Team Members. A team relations representative will be available and must attend each phase of the corrective action procedure. The steps are as follows:

Discussion Planner

Once it has come to the group leader and/or manager's attention that a Team Member's performance does not meet HMMA's performance standards, the group leader and/or manager will meet with the Team Member. This discussion is designed to gather facts about the performance issue and is to be a two-way conversation. The group leader and/or manager is to explore whether the performance issue is failure in the process, equipment, or with the Team Member.

- Equipment Problem. The group leader and/or manager will investigate and seek help in resolving any equipment problems.
- Process Problem. The group leader and/or manager will investigate and seek help in resolving any process problems.
- Team Member's Performance. Inform the Team Member of performance expectations and explain potential ramifications if the poor performance continues.

Informal Discussion – Phase I

Phase I of corrective action is to address minor performance problems. The intent of Phase I is to bring the performance problem to the Team Member's attention through an Informal Discussion. The group leader and/or manager is responsible for conducting the Informal Discussion. The team relations representative will attend the Informal Discussion and serve as a witness. The Informal Discussion is an open discussion between the Team Member and the group leader and/or manager that

identifies the nature of the problem and the possible solution.

If the performance problem is corrected and no additional problems develop during the following twelve months, the documented Informal Discussion will be removed from the Team Member's file and will not be used for any future corrective action.

Formal Discussion – Phase II

The Formal Discussion is the 2nd phase of corrective action and is to be used for more serious performance issues, or if a Team Member fails to correct an existing performance issue after receiving an Informal Discussion, or if it is decided that a Team Member's performance issue is serious enough that it warrants a higher phase of corrective action. The Team Member will be given a Formal Discussion letter. Attendees at the Formal Discussion phase are the group leader and/or a member of management, team relations representative and the Team Member. The group leader and/or production management Team Member will prepare a Formal Discussion document addressed to the Team Member summarizing the performance issue. If the performance issue is corrected and no additional performance issues arise during the following twelve (12) months, the Formal Discussion letter will be removed from the Team Member's file and will not be used for any future corrective action.

Commitment Discussion – Phase III

The Commitment Discussion is the 3rd phase of corrective action. This phase will be used if a Team Member's performance continues to be unacceptable or the Team Member commits a serious action that requires a higher level of corrective action.

A Commitment Discussion is a formal meeting, which is conducted with the affected Team Member; his/her group leader and/or manager, team relations representative, the team relations manager, and the appropriate production management Team Member. The purpose of this phase of corrective action will be to determine what aspects of the Team Member's performance are unacceptable, why they are unacceptable, and the reasons behind the Team Member's performance problem. The Team Member will be required to write an action plan stating what actions he or she will take to resolve the performance problem.

The Commitment Discussion letter and the Team Member's commitment letter will remain in the Team Member's personnel file for a period of 24 months. If the Team Member is able to correct the performance problem and no additional problems develop, the Commitment Discussion letter and the Team Member's action letter will be removed from the Team Member's personnel file and will not be used for any future corrective action.

Decision Leave – Phase IV

The Decision Leave is the 4th phase of corrective action. This phase may be taken if the Team Member fails to correct the performance problem

after the Commitment Discussion or if it is determined that the Team Member's performance is serious enough to warrant action beyond a Commitment Discussion.

The affected Team Member will meet with his/her group leader and/or manager, team relations representative, team relations manager and the appropriate production management Team Member for a formal meeting. The Team Member will be given the following day off with pay. The Team Member will be asked to use this time to make a final decision whether or not he/she wants to remain employed by HMMA.

If the Team Member decides to return to work and commit to correcting his/her performance, the day off will be excused with pay.

Information regarding a decision leave will remain in the Team Member's personnel file for a period of twenty-four (24) months. If the Team Member is able to correct the performance problem, and no additional performance problems develop, it will be removed from the Team Member's personnel file and will not be used for any future corrective action.

Corrective action will be administered sequentially with regard to all attendance performance situations. Specific performance-related issues regarding performance, quality, and conduct will be evaluated on a case-by-case basis, and corrective action may be applied based on the severity of the performance issue. Any Team Member whose employment is terminated by HMMA may be entitled to request a Peer Review Panel Hearing.

Termination

HMMA and its Team Members have a mutual interest in maintaining job security and stability in our organization. Because of our mutual interest, HMMA and its management team hope that we never have to terminate a Team Member's employment. However, in situations where a Team Member refuses to respond to the steps in the "Corrective Action Program" outlined above, or if a Team Member's actions are such that HMMA feels his/her employment cannot be continued, the Team Member will be terminated. Every termination decision will be reviewed by the team relations manager, the Team Member's manager, and the Director of Human Resources to review all facts and information before a termination decision is made.

Notwithstanding anything to the contrary contained in this handbook, every Team Member's employment with HMMA is voluntary and is subject to termination by you or HMMA at will, with or without cause, and with or without notice, at any time. Nothing in this handbook or HMMA policies or procedures shall be interpreted to be in conflict with or to eliminate or modify in any way the employment-at-will status of HMMA.

SERIOUS MISCONDUCT

HMMA requires a high degree of personal integrity from its Team Members. There are certain things a person can do that by nature are so serious that they place him/her outside of the "Corrective Action Policy." When a person commits one of those actions against HMMA and/or his/her fellow Team Members, he/she may be terminated from employment immediately.

In serious misconduct cases where it is determined that termination is not appropriate, the Team Member will receive a Letter of Conditional Employment which will remain in the Team Member's file for 36 months. Upon issuance of a letter of conditional employment, the affected Team Member, group leader, team relations representative, team relations manager and the appropriate management Team Member will have a formal meeting. Following this meeting, the Team Member will develop an action plan and make a written commitment to successfully implement that plan.

Listed below are some examples of activities that constitute serious misconduct at HMMA:

- Serious and/or excessive violations of HMMA's attendance program.
- Serious and/or excessive violations of HMMA's performance standards.
- Threatening or fighting on HMMA's premises, at HMMA sponsored functions, or while conducting business away from the plant.
- Disclosing, misusing or removing from the premises any HMMA or fellow Team Member's property unless authorized.
- Use, possession, sale, transfer of or being under the influence of illegal drugs, alcohol or any other intoxicating substance at any time on HMMA property. Gifts of alcohol and/or coolers containing alcohol are also prohibited at HMMA.
- Deliberate damage to HMMA property or the property of a fellow Team Member.
- Intentionally misrepresenting or falsifying any information concerning employment or any report or HMMA record.
- Engaging in any form of discrimination in the workplace, including racial or sexual harassment of a fellow Team Member or harassment by a person in a supervisory position of a Team Member under the supervisor's authority.
- Insubordination, including refusing to perform a work assignment or refusing to follow direction of HMMA security or safety personnel.
- Deliberately trying to conceal serious quality problems in HMMA products.
- Deliberately using unsafe work practices that might seriously

jeopardize the health or safety of the Team Member or a fellow Team Member.

- Use, possession, sale or transfer of a weapon at any time on HMMA property.
- Engaging in illegal activities such as gambling or trafficking stolen goods.
- Deliberately violating HMMA's Solicitation and Distribution Policy.
- Deliberately spreading false or malicious rumors or slandering or libeling a fellow Team Member, HMMA or an HMMA product.
- Leaving the plant without proper authorization (note: this is also considered a voluntary resignation).
- Chronic violations of HMMA's Safety Rules or Procedures.
- Willful violations of HMMA's Lockout/Tag out, Confined Space Procedures or other situations where the violation places the Team Member or others in immediate danger.

The aforementioned list is not all inclusive.

WORKPLACE THREATS AND VIOLENCE

This policy applies to any Team Member and/or person that make substantial threats, exhibits threatening behavior, or engages in violent acts on HMMA property or makes threats, exhibits threatening behavior, or engages in violent acts relating directly or indirectly to any work activities.

Threats, threatening behavior, or acts of violence against Team Members, vendors, contractors, visitors, or other individuals by anyone on HMMA property will not be tolerated (zero tolerance).

Threats, threatening behavior, or acts of violence against Team Members, vendors, contractors, visitors or other individuals relating directly or indirectly to work activities including phone calls, written materials, behavior at HMMA-sponsored activities will not be tolerated. Firearms, ammunitions, knives, bows or any other types of weapons are not permitted on HMMA property which includes the parking area(s).

In the event that violations of this policy are substantiated, HMMA will initiate a decisive and appropriate response. This response may include, but is not limited to: suspension or termination of any business relationship, reassignment of job duties, suspension or termination of employment, and/or seeking arrest and prosecution of the person or persons involved. Any violation of this policy will be considered serious misconduct. Any Team Member terminated pursuant to violations of this policy shall not be subject to the Team Member Review Board process.

Any Team Member that has knowledge of or witnesses threats, threatening behavior or an actual incident or violations of this policy is required to report the information to his/her immediate supervisor and/or the man-

ager of security and/or his/her Team Member relations representative.

TEAM MEMBER RESOLUTION PROGRAM AND PROCEDURE

In any organization there can be differences of opinion about working conditions, work rules and policies, and other work-related issues. To resolve these differences effectively, communication is essential. This program is designed to enhance communication by providing a formal process to resolve legitimate disputes. HMMA will provide a prompt, orderly means of receiving and responding to Team Members' concerns. This program and procedure is intended to supplement, rather than discourage or replace, informal discussions between supervisors and Team Members. A supervisor should make every reasonable effort to resolve Team Members' concerns outside the formal Team Member Resolution Procedure.

The Team Member Resolution Program and Procedure is available to all full-time Team Members who have successfully completed their probation period. The Team Member Resolution Program and Procedure is not available to individuals employed in a temporary status or to employees of any contracted services provided to HMMA. The initiation of the Team Member Resolution Procedure in good faith by Team Members shall not adversely affect their standing as Team Members.

The Team Member Resolution Program consists of four steps, which are outlined below.

Outside counsel will not be permitted to attend any of the meetings. However, appropriate witnesses may be permitted to attend with approval from the manager of team relations.

Step 1: Supervisory Level

Team Member's Role

The Team Member should contact the team relations representative to coordinate a meeting in order for the Team Member to verbally present the concern to his/her supervisor within five (5) working days of the original cause for the appeal, or from the date the Team Member learned the cause for the appeal.

Supervisor's Role

The supervisor will meet with the Team Member and the team relations representative and respond verbally to the concerned Team Member within five (5) working days.

Step 2: Resolution Request**Team Member's Role**

If a Team Member does not agree with the supervisor's verbal response, he/she should contact a team relations representative for a Resolution Request Form. The team relations representative will give the Team Member the form and assist the Team Member in filing the form if necessary. The team relations representative will forward the Resolution Request form to the Team Member's section manager and coordinate within five (5) working days of receiving the answer to Step 1. The team relations representative will attend the meeting.

Section Manager's Role

The section manager will review and investigate the facts of the appeal with the assistance of the team relations representative. The department manager will then conduct the prearranged meeting with the Team Member and the team relations representative.

Regardless of the outcome of the meeting, the department manager will provide the Team Member with a written response, briefly outlining the decision. This response will be delivered to the Team Member no later than five (5) working days following the meeting.

Step 3: Resolution Appeal**Team Member's Role**

If a Team Member does not agree with the department manager's response, he/she should contact a team relations representative. The Team Member must make a written request stating he/she does not agree with the department manager's response and request to go to the next step. The team relations representative will forward the request to the team relations manager and coordinate a meeting within five (5) working days of receiving the answer to Step 2. The team relations representative will attend the meeting.

Manager of Team Relations Role

The team relations manager will review and investigate the facts of the appeal with the assistance of the team relations representative. The manager of team relations will then conduct the prearranged meeting with the Team Member and the team relations representative.

Regardless of the outcome of the meeting, the manager of team relations will provide the Team Member with a written response, briefly outlining the decision. This response will be delivered to the Team Member no later than five (5) working days following the meeting.

Step 4: Resolution Final Appeal

The Resolution Final Appeal is the last step of the process. The commit-

Any refusal by a Team Member to submit to a search or testing procedure may, however, constitute grounds for termination. The primary purpose of this policy is to promote the safety and well-being of all Team Members. It would be inconsistent to promote a strong safety effort while allowing the use of drugs and alcohol or the possession of drugs, alcohol and/or weapons on HMMA property to undermine the safe and effective performance of Team Members on the job.

Each applicant for employment will be required, as a condition of employment, to undergo a urine drug screen/hair analysis. Applicants will be asked to read the policy and sign the post offer employment offer and Team Member consent to alcohol and drug screening. If an applicant tests positive and is determined to be in violation of this policy, applicant will be ineligible for employment.

FOR CAUSE TESTING AND RANDOM TESTING

Each Team Member, as a condition of continued employment, is subject to medical or physical examination or tests, including urine drug screen and/or a drug screen using hair, at the determination of the responsible group leader, department manager and concurrence of the HMMA team relations manager and/or his/her designee, providing the following conditions are met:

- If the Team Member's group leader and/or manager has reasonable cause to suspect that the Team Member is in violation of this policy; or
- If the Team Member's job performance is deficient in a manner which suggests a possible violation of this policy; or
- If the position is designated as a safety sensitive and/or high risk occupation; or
- If the Team Member is selected at random for testing in order to monitor and ensure compliance by all Team Members with this policy. The random selection will be done centrally by HMMA's medical facility. Team Members will be asked to sign the Pre-Employment Offer and Team Member Consent to Alcohol and Drug Screening form.

If a Team Member tests positive for a random and/or for-cause testing and is determined to be in violation of this policy, the Team Member will be required to:

- attend a substance abuse program
- follow the attending physician and/or a qualified substance abuse counselor's guidance
- agree to random testing over the next 12 months
- supply HMMA's medical clinic with documentation of treatment and/or documentation that no further treatment is necessary
- agree to remain substance free as a condition of employment
- be responsible for any cost incurred that is not covered

- by HMMA's medical plan for treatment
- voluntarily resign if the Team Member subsequently tests positive for any subsequent illegal or un-prescribed substance and or being under the influence of alcohol.

Any adulterated specimen will be viewed as falsification and will result in immediate termination.

Any Team Member requesting rehabilitation assistance will be referred to the Team Member Assistance Program (TMAP) provider for assessment and treatment recommendations. The TMAP provider will monitor the program and advise HMMA of the Team Member's progress. Should the Team Member fail to maintain satisfactory progress or discontinue the program, the Team Member will be subject to termination.

Any Team Member who refuses to submit to drug testing will be considered to be insubordinate and will be terminated. Additionally, if a Team Member refuses to submit to or cooperate with a post-accident blood or urine test, he/she may forfeit his/her right to recover workers' compensation benefits.

HMMA recognizes that drug abuse and/or dependency are medical/behavioral conditions that can be successfully treated. Team Members with drug problems are encouraged to request assistance from the Team Member Assistance Program. Participation in TMAP is totally voluntary and completely confidential; however, a request for assistance or participation in a TMAP does not excuse a Team Member from violation of this policy.

HMMA reserves the right to conduct unannounced searches of its property, vehicles, and facilities, including Team Member's vehicles, work areas, desks and lockers assigned to Team Members, at any time. No Team Member has the right to interfere with or object to such searches of HMMA property based on expectations of privacy or otherwise. HMMA reserves the right to search personal property belonging to its Team Members, such as, but not limited to, lunch boxes or bags, pocketbooks or briefcases if such property is brought onto HMMA premises or into HMMA vehicles.

All Team Members will be required to sign a statement acknowledging their understanding of and compliance with HMMA policy.

PUBLIC RELATIONS

To ensure that all information given to the public and the media is consistent, beneficial and accurate, it is important that the Public Relations Department coordinates and controls all information going out externally. If you are contacted by the news media and asked for information about HMMA or if you are asked to comment about HMMA, you are to refer the interviewer to the Public Relations Department. You may not release any information about HMMA business or activities unless you have been specifically authorized by the Public Relations Department.

INTERNAL COMMUNICATIONS

Communication at HMMA is a key factor to our success. In order to maintain good communications, HMMA has established various avenues of communicating information to the Team Members. Additionally, and just as important, are the avenues that have been created to allow you, the Team Member, to communicate to HMMA. It is important to keep the avenues of communication open. By communicating we can all be successful. Even though we have many avenues for communication at HMMA all Team Members are encouraged to communicate with their group leaders and managers. Some of those methods are:

Open-Door Policy

HMMA believes that each Team Members should have the ability to address problems as they arise personally. As with all companies, misunderstandings, differences of opinions and disagreements occur. If issues and concerns are not addressed in a timely manner those issues of concern can damage your relationships and affect all the parties involved. HMMA wants, and encourages all Team Members to openly communicate with one another to resolve misunderstandings, differences of opinion and disagreements. One way that we can resolve these issues is by having open communications with one another and the ability to discuss issues and concerns openly.

Unfortunately, there may be times when an agreement cannot be reached. In these situations HMMA wants every Team Member to know that through the Open-Door Policy they can address these issues in order to achieve a fair and practical solution.

Any member of the team relations department will assist you should a concern or issue were to arise.

Again, HMMA encourages all Team Members to discuss the situation in a respectful manner with the party involved. If a resolution is not reached, discuss the situation with the next level of management. The Open-Door Policy is meant to be used in a systematic fashion and may be pursued to the top levels of HMMA's management.

Bulletin Board

HMMA has bulletin boards at all entrances and exits. These bulletin boards are for communicating work related information, information required by law, and job postings. Additionally, each team will have a bulletin board; these boards are for work related communications only. Team Members are prohibited from posting any information or notices directly on any bulletin board at HMMA.

President's Roundtables

The President's Roundtables provide HMMA's Team Members an opportunity to meet and talk with HMMA's President as well as our Executive Vice Presidents. Team Members will be selected randomly on a bi-monthly basis and sent invitations to attend the meetings. Participation is voluntary; however each Team Member is encouraged to attend so that they can communicate directly with the President.

Group Leader/Managers One-on-Ones

Each group leader/manager will meet with each Team Member twice a year. In a company the size of HMMA it is difficult at times for the two to get together and have a casual conversation. HMMA feels that developing these relationships is important and helps foster open communication. These meetings will be held away from the production work areas and are meant to be an opportunity for The Team Member and group leader/manager to have a 15 minute casual conversation.

Manager Lunches

The managers lunches are another opportunity for a team to get together in a casual setting where the manager/assistant manager of the department meets with each team in their department every six months and provides lunch. Participation is voluntary. The purpose of these meetings is to continue to foster open communication, and promote a team spirit as well as a feeling of family within the department. The meeting is held during the normal lunch period and is unpaid time.

Team Advisor

The Team Advisor is a bulletin that will be issued to the team to communicate important information to the teams. The Team Advisor will be issued on an as needed basis to each team leader so they can read the information during the Five Minute Communication meeting. Once the bulletin has been read it will be posted for a specified time in order to allow Team Members to read it at their leisure.

Hyundai Communication System (HCS) 334-387-8008

HMMA has established the HCS in order to allow Team Members an opportunity to ask questions in the event their group leader, team relations representative or another member of management has been unable to answer your question or concern. This means of communication is done anonymously, by calling the HCS. The HCS does not record the extension or phone number from which the call came. HMMA encourages Team Members to talk with their managers first, but in the event you need to ask a question, make a comment, or voice a concern on a confidential basis, we also encourage you to call the HCS.

The HCS will be available 24 hours a day, seven days a week. Your call

will be directed to the Director of Human Resources and or his designee. The Director of Human Resources will review the question and/or comment and direct them to the most qualified person. If you leave your name and want a personal response, a meeting will be scheduled if you request one. Every effort will be made to make sure all replies are given within ten working days of receiving the call.

Anonymous calls will be posted with the answers on the HCS boards for a period of five days. We also ask everyone to be patient. Some calls may contain complex issues that require more time in order to answer them accurately.

HMMA Closed Circuit Television System (CCTV)

HMMA CCTV System is an internal video system that will be used to broadcast HMMA information to all Team Members daily.

HMMA Weekly News

HMMA Weekly News is a weekly summary of company-related information. The HMMA Weekly News will be distributed every Monday on a weekly basis.

HYUNDAI Insights

Hyundai Insights is a newsletter that will be sent to the Team Members home on a biweekly basis. This news letter will keep you and your family informed about what is going on at HMMA as well as what is going on at HMC and HMA.

Five Minute Communication Meetings

Each team will have a five minute communication meeting at the start of each shift. The purpose of this meeting is to provide the Team Members with information pertaining to production, quality, or safety. These meetings may also be used to discuss sales, benefits, policy updates, or other pertinent information the team may need to know. All Team Members must be in their assigned meeting area ready for work at the start of their shift.

COMMUNITY RELATIONS

Speeches

HMMA receives many requests for speeches about our company from a variety of groups. If your organization is not-for-profit and would like a representative from HMMA to speak to a group, you or your organization needs to submit in writing the following information: All requests must be on the group's letterhead.

- Requested date of speech
- Time
- Location

- Name of Group
- Topic you would like covered
- Background information on the organization
- Person to contact with their phone number or email address

All requests must be turned in at least one month prior to the requested date for the speech and should be addressed to the manager of public relations.

Tours

All family and public tours must be scheduled through the Public Relations Department.

GENERAL INFORMATION

Electronic Devices

HMMA has a responsibility to protect every Team Member as well as to protect HMMA assets. The automotive industry is a very competitive industry, and in order to protect its Team Members and proprietary information, HMMA must control what types of electronic devices are allowed in the workplace.

In order to ensure the health and safety of all Team Members, personal radios, televisions, tape recorders, and tape/CD/mp3 players are not permitted anywhere in the facility.

Camera/Video Camera

In situations where a department uses a camera/video camera in order to conduct investigations, the department must have approval by the Security Department and must have a camera/video camera pass attached to the camera/video camera at all times. If a supplier has a need that requires the use of a camera/video camera in order to conduct an investigation or to assist in the function of their job duties, he/she must gain written approval from the responsible department. The written approval must be submitted to the Security Department for approval and verification from the responsible department. Once the Security Department has approved the use of a camera/video camera, Security personnel will issue a temporary camera/video camera pass. The camera/video camera pass must be attached to the camera/video camera.

Any camera/video camera without a camera/video camera pass will be confiscated, held in security and returned to the owner as they exit HMMA's premises, minus its film.

Personal camera/video cameras and camera/video phones are not permitted within the plant, nor will pictures be allowed during general tours. Business situations may require photos to be taken in the plant, but when these situations occur, only Team Members with an approved camera/

video camera pass using a HMMA-owned camera/video camera will be allowed to do so.

Cell Phones/Pagers

HMMA reserves the right to issue cell phones and/or pagers for business reasons to those individuals that have been approved in order to conduct HMMA business matters.

Personal cell phones and pagers will be allowed in the facility. However, cell phones and pagers must be kept in the Team Member's locker or desk during work times. In addition, the devices must have the volume muted while being stored. Team Members may use their cell phones and/or pagers during breaks and lunch periods only, and the Team Member must be in a designated break area.

Audio Tape Recorders

Audio tape recorders are prohibited on HMMA premises. In situations where an audio tape recorder is needed a request for approval must be submitted to and approved by the Director of Human Resources or his/her designee.

Any violation of the aforementioned could result in corrective action up to and including termination. Any violation by a non-HMMA Team Member could result in their being asked to leave the premises and the film, tape, disk, and/or any other type of device capable of storing audio or video information will be confiscated and/or memory erased.

HMMA TOOLS

HMMA has supplied each Team Member with the tools as well as state of the art equipment needed to perform their daily job functions. Each Team Member is responsible for the care and upkeep, and inventory of tools and other equipment issued by HMMA. These tools and equipment are not to be removed from the appropriate HMMA work area. Personal tools must not be brought into HMMA.

Intentional damage to any HMMA tooling or equipment is subject to corrective action up to and including termination.

LOCKERS

HMMA will provide each Team Member with a locker so that they may store personal items. However, these lockers should not be used to store money or valuables. HMMA will not be responsible for anything that is destroyed, lost or stolen from any locker.

Lockers will remain the property of HMMA at all times. HMMA maintains the right to inspect any locker and its contents at any time with or without notice if it is believed the locker (s) contain items contrary to HMMA policy. This includes but is not limited to items such as firearms, explosives, dangerous or lethal weapons, alcohol, illegal drugs, or miss-

ing HMMA property.

CAFETERIA

HMMA provides two dining facilities for our Team Member's convenience. HMMA has designed each of our dining facilities so that you can experience a clean and pleasant area while dining. Prepared meals will be served daily. However if you choose to bring your own meal our dining facilities have ample seating for everyone. Team Members will also find vending machines located throughout the facility if you wish to purchase food or drink.

SMOKING

In an effort to provide safe and comfortable work conditions, HMMA prohibits smoking and/or the use of smokeless tobacco products in all production facilities and administrative areas. Team Members who use tobacco products should respect all areas designated as "no smoking," limit their tobacco use to those areas where and when smoking is permitted (outside of the facility and only during breaks and dinner/lunch), and dispose of all smoking materials/smokeless tobacco products in proper containers.

Smoking or the use of smokeless tobacco is only permitted during non-work times. This is outlined as follows: one 10-minute paid rest period in the first half of the shift, one 10-minute paid rest period in the second half of the shift and during the unpaid lunch period. In case of overtime work, an additional 5-minute rest period for each full hour (60 minutes) of overtime can be taken. There are some jobs where there are no set scheduled break times, such as maintenance, administration, etc. It is understood that these Team Members still fall with the guidelines of taking only a 10-minute break in the first half of the shift, and a 10-minute break in the second half of the shift.

HMMA intends to consistently enforce the smoke free environment policy described in this document. Any HMMA Team Member violating this policy is subject to corrective action up to and including termination.

TELEPHONE CALLS

All HMMA phones are for business purposes only. Team Members are not allowed to use HMMA phones for personal business. However, if an emergency situation should arise, the Team Member is to contact their group leader/manager and/or another member of management in order to use a HMMA phone.

All emergency phone calls into HMMA will be forwarded to the appropriate area. HMMA's Team Members and their families are very important and considered HMMA's extended family. Each Team Member should supply their family members with an emergency contact number for their work area, as well as the department they work in, the group leader/ manager's name, and make sure their family knows that the contact information is for emergencies only.

ACKNOWLEDGMENT

The information contained in the Team Member Handbook of Hyundai Motor Manufacturing Alabama, LLC has been prepared as an aid and a guideline to give you a summary of the benefits, policies, and procedures at HMMA. It contains information about what you can expect from HMMA, and in turn, what HMMA expects of you.

If, in this Handbook, we have inadvertently said or implied anything that is different from the actual provisions of any HMMA policy or benefit plan document, the actual provisions of the policy or benefit plan will govern.

If at any time you have any questions regarding policies, you may talk to your group leader, assistant manager, manager, or team relations representative.

The policies and statements contained in this Handbook, and in other provisions that may be added in the future, are not a contract of any kind, but are rather a description of company policies. Employment with HMMA is at will and is not offered, contracted, or promised for any specific length of time. You have the right at HMMA to quit for any reason or for no reason at any time. Conversely, HMMA may terminate your employment on the same basis. Although this Handbook reflects current policies, these policies may be unilaterally changed or rescinded by HMMA at any time.

I, _____, acknowledge that I have received the handbook and that it is my responsibility to read the handbook and ask questions if needed in order to gain understanding.

Signature

Number

Date

GRANT OF LICENSE AND RELEASE OF CLAIMS

I acknowledge that while employed with HMMA, I may, either individually or in a group setting, be photographed, filmed, or videotaped from time to time, and I voluntarily agree to be photographed, filmed, and/or videotaped. I fully understand and agree that such photographs, films, or videotapes may be freely used for public display in any form of media for the purpose of furthering the business interests of Hyundai Motor Manufacturing Alabama, LLC, Hyundai Motor America, Inc., and/or Hyundai Motor Company through advertising, publicity, trade, or any lawful purpose whatsoever. I further acknowledge and agree that I shall not be entitled to, nor shall I demand, compensation for such use.

By signing below, I hereby grant to Hyundai Motor Manufacturing Alabama, LLC, Hyundai Motor America, Inc., and Hyundai Motor Company, and their respective subsidiaries and affiliated companies, associate agencies, successors, and assigns, and to such other persons as they may designate from time to time (collectively the "Company"), an unconditional, royalty free license giving them the absolute right and permission to use my name, image, and/or likeness in such photographs, film, videotape, or other medium for the purposes set forth above without any entitlement to compensation for such use. This license shall be of unlimited duration and shall survive the cessation of my employment with HMMA.

In consideration for allowing me to participate in any photo, film or video shoot, I, for myself, my heirs, executors, administrators, and assigns, and all those who might claim through me, hereby release and discharge the Company and its/their officers, employees, agents, and representatives, from any and all claims, demands, damages, loss, expenses, and liability (specifically including but not limited to claims for compensation, royalties, or fees for use of my name, image, or likeness), whether known or unknown or presently existing, formerly existing, and which may hereafter arise, as a direct or indirect result of the use of my name, image, or likeness.

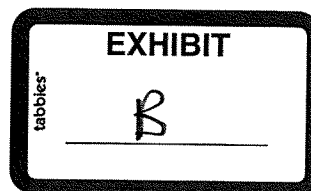
TEAM MEMBER:


Signature

Date

Printed Name

Number



 HYUNDAI Hyundai Motor Manufacturing Alabama Rev Date: 01/10/06	RECEIPT of HANDBOOK ACKNOWLEDGEMENT Owner: Team Relations	HR-AL-HR-TR-F-00021 Revision Level: 00
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The information contained in the Team Member Handbook of Hyundai Motor Manufacturing Alabama, LLC has been prepared as an aid and a guideline to give you a summary of the benefits, policies, and procedures at HMMA. It contains information about what you can expect from HMMA, and in turn, what HMMA expects of you.

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I, Jerry L. Dees Sr, acknowledge that I have received, the Handbook and that it is my responsibility to read the handbook and ask questions if needed in order to gain understanding.

Signature: Cleon Dees

Team Member Number: 103039

Date: 10 Jan 08

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JERRY LEON DEES, JR.,

Plaintiff,

v.

HYUNDAI MOTOR MANUFACTURING
ALABAMA, LLC, and HYUNDAI MOTOR
AMERICA, INC.,

Defendants.

CIVIL ACTION NO.:
2:07-cv-00306-MHT-CSC

DECLARATION OF ROB CLEVINGER

1. My name is Robert A. Clevenger. I am over eighteen (18) years of age, and I have personal knowledge regarding the information contained in this Declaration.

2. I am employed by Hyundai Motor Manufacturing Alabama, LLC as Assistant Manager, Team Member Relations in the Team Relations Department.

3. My responsibilities as Assistant Manager, Team Member Relations include overseeing the investigation of potential disciplinary issues involving Team Members, overseeing the maintenance of documents, information, and files concerning such investigations, and making a presentation to a termination committee on behalf of Team Relations concerning its investigation and related information in situations where an employee is being considered for termination.

4. In particular, I was directly involved in the investigation of Plaintiff Jerry Leon Dees, Jr., with respect to allegations that Jim Brookshire, HMMA's Stamping Production Manager, reported seeing Plaintiff asleep during his shift on February 14, 2007.

5. Under my supervision and instruction, Team Relations Specialist William Ware interviewed Brookshire on February 15, 2007, and prepared a handwritten statement for Brookshire to sign confirming their discussion. A true and accurate copy of the handwritten statement is attached as **Attachment A**.

6. Upon reviewing this initial statement, it was determined that additional confirming information would be helpful in the investigative process and, accordingly, under my supervision and instruction, William Ware interviewed Brookshire again on February 19, 2007, and prepared a handwritten statement for Brookshire to sign confirming their discussion. A true and accurate copy of the handwritten statement is attached as **Attachment B**.

7. Additionally, Team Relations received information from Plaintiff following an interview of Plaintiff conducted by Plaintiff's supervisor, Greg Prater, and attended by William Ware. A Team Relations Memo is customarily prepared following such a meeting and William Ware did in fact prepared such a memo, dated February 21, 2007, which was made part of Team Relations' file materials. A true and accurate copy of this Team Relations Memo is attached as **Attachment C**.

8. On February 23, 2007, I prepared a Team Relations Memo summarizing Team Relations' findings, Plant Engineering Department's recommendation, and information on relevant past practice. In sum, Plant Engineering Department's recommendation was termination given the circumstances, including Brookshire's statements, the fact that the area where Plaintiff was observed is an isolated area suggestive of intent, and, further, given that

Plaintiff's response contained inconsistencies with other evidence and because his response suggested a lack of concern about his job. The past practice considered in this situation involved another employee who, similar to Plaintiff, was discovered sleeping during working hours and was terminated as a result. A true and accurate copy of this Team Relations Memo is attached as **Attachment D**.

9. On February 26, 2007, I attended the termination committee meeting and presented Team Relations' findings, recommendations, and the above-referenced documents to the committee for consideration. Others that attended the termination committee included Wendy Warner, John Kalson, John Applegate, Rick Neal, and Scott Gordy. A true and accurate copy of the electronic appointment that I sent to these individuals scheduling the termination committee meeting held on February 26, 2007, and listing all of the attendees of termination committee, is attached as **Attachment E**.

10. My role in the termination committee process is simply to provide information for the termination committee to consider. Although Team Relations does ordinarily make a recommendation based on its findings, I do not technically have a "vote" on the termination committee and the termination committee is free to disregard Team Relations' findings or request further information before taking action.

11. The information and statements received by Team Relations, including information received from Plaintiff, and the memoranda prepared by Team Relations, contained no information suggesting that Plaintiff was a member of the uniformed services or that he felt he was being harassed by any HMMA Team Member, or that he was otherwise protected by the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301, et seq. ("USERRA") in any relevant aspect. At the time the termination committee met, the

information and documents presented and upon which Plaintiff's termination was based contained no suggestion that Plaintiff was a member of the uniformed service. Likewise, whether or not Plaintiff was a member of the uniformed service was not raised or discussed during the termination committee process and was not a basis or motivating factor related to the discussion, analysis, or decision surrounding his termination.

12. After Plaintiff's employment was terminated, Wendy Warner, the Manager of HMMA's Employment & Benefits Section, instructed me to write a letter to Plaintiff for her signature regarding HMMA's Team Member Review Board process. A true and accurate copy of the letter I wrote to Plaintiff is attached as **Attachment F**.

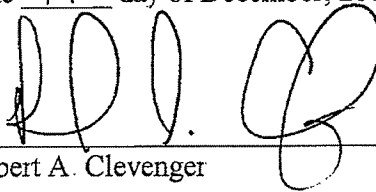
13. The Team Member Review Board process allows Team Members who feel they have been wrongfully terminated to request a review of that termination by a random selection of trained and qualified Team Members.

14. I left Plaintiff separate telephone messages to contact me regarding the Team Member Review Board process on March 2, 2007, March 5, 2007, and March 7, 2007. In the March 7th letter described in paragraph 12 above, I informed Plaintiff that to continue the Team Member Review Process he would have had to attend a meeting with me on March 12, 2007 at 10:00 a.m. to review the process and select a Team Member panel.

15. Plaintiff telephoned and left a message on March 10, 2007 stating that he received the May 7th letter described in paragraph 12 above and that he could not attend the meeting on March 12, 2007.

16. I received no further contact from Plaintiff and am not aware of any additional contact from Plaintiff about his desire to participate in the Team Member Review Process.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing information is true and correct. Executed this the 14 day of December, 2007.



Robert A. Clevenger

EXHIBIT

A

Interview with Jim Brookshire

On Feb/4 at approx. 1:00 AM, Jim went upstairs to check on some quality issues in the SOP. (Side outer)

Jim went up to the 3rd floor where he noticed Leon Deor sitting at operating station. Leon was positioned with his head down and his back was towards the cabinet.

Jim observed Leon sitting in this position for approx. 2 minutes.

At this time Jim turned up his radio and let it chirp about 4 times before Leon responded.

Whenever Leon woke up he grabbed a pole and began to act like he was pulling trolleys.

Jim went around to check some panels and when he approached the area again he noticed Leon sitting in the same chair; however, this time he was alert. Not long after this Jim witnessed Leon walking down the stairs.

About 30 minutes passed by before Jim talked to Mr. Kevin Hughes. During this time Kevin did not know where Leon was.

J-A BL 2-15-07

EXHIBIT

tabbies

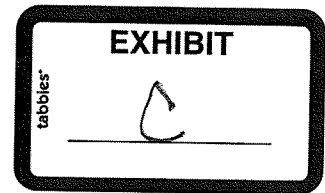
B

Jim was approximately 25 feet away from Leon when he noticed that he was asleep.

Jim walked towards Leon and began chirping his radio at a distance approx 15 feet.

Due to Leon's hat being on his head Jim did not see his eyes closed; however he (Jim stated that his head was facing towards the floor, with his chin tucked to his chest)

J. A. B. J.
2-19-07

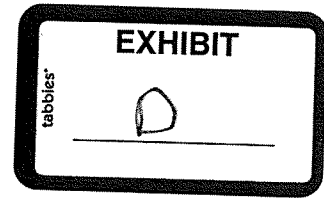



 HYUNDAI Hyundai Motor Manufacturing Alabama	TEAM RELATIONS MEMO	HR-AL-HR-TR-F-00002
Revision Date: 05/26/06	Owner: Team Relations	Revision Level: 02

TO: Rob Clevenger
FROM: William Ware
DATE: February 21, 2007
SUBJECT: Leon Dees

Interview with Leon Dees, William Ware, and Greg Prater

Greg began our talk with Leon by informing him that a member of management noticed him on the third floor asleep on the morning of February 8th. Leon responded, "I was not asleep, I know exactly who you are talking about, call Jim Brookshire in here and I will confront him right now." Greg calmed Leon down and explained that the reason why we had assembled into the room was so that we could get his side of the story. Leon stated that he was sitting in a chair text messaging his daughter due to the bad weather outside. His location was at the RO 1 station. Leon stated that this event took place around 10:30-11:30 pm. Leon also contends that Jim never approached him. In fact when asked what was the closest Jim came to him he replied about "55 feet." Leon made the following comment several times; he sat and watched Jim walk around on the third floor; however, he is to the point where he does not care about what people say. He went on to say that we complain over and over again but nothing happens, so I just don't care anymore. "If something breaks then I will fix it but I will not run the shop like I used to."



 HYUNDAI Hyundai Motor Manufacturing Alabama	Team Relations Memo	HR-AL-HR-TR-F-00002
Revision Date: 9-Sept-04	Owner: Team Relations	Revision Level: 00

TO: Greg Kimble

FROM: Rob Clevenger

DATE: February 23, 2007

SUBJECT: Leon Dees/ Term


Summary: On February 14, 2007 at approximately 1am, Jim Brookshire (mgr, stamping) was in the stamping third level looking at a quality issue. The third level overhead is approximately 75ft off the ground. It is an isolated area. This is where the side outer panels are warehoused in overflow.

Jim noticed Leon sitting in front of a panel in a chair. Jim states Leon was asleep with his head down and his chin tucked to his chest. Jim states he was 25ft away when he first noticed Leon. Two doors of the panel were open which served as a blind and hide Leon from most views. He moved to within 15ft of Leon and observed him for approximately Two (2) minutes. At that time Jim keyed the mike on his radio and it made a chirping sound several times. At this sound Leon lifted his head then got up and picked up a tool used to clear carrier when they become inoperable.

Leon did not speak to Jim or explain his presence in the overhead. Jim also noted there were no carriers that were in need of service. There is no reason for a maintenance person to be in the overhead unless there is an immediate need for carrier repair.

In Leon's statement he says the time was 10:30pm to 11:30pm. He also states he was sitting in the overhead text messaging his daughters regarding the weather and was not asleep. Leon states Jim never got closer than 50ft from him. Leon became agitated and stated he didn't give a damn and was tired of this shit.

Conclusion: Leon's statement does not match the timeline or the proximity described by the stamping manager. I believe we must give weight to the manager's account and assume that the event took place at 1am on Wednesday morning. The storms had passed our area by 7:15pm on Tuesday evening. I have a signed statement by the stamping manager that he was 15ft from Leon and observed him for 2 minutes. There was a chair placed in between the two open doors. The area is several feet off the floor and is an area that a maintenance man would enter fix a carrier and then leave. There is not a need or a practice where a person would need a chair and be waiting in that area for a breakdown to occur. The department is asking for termination.

 HYUNDAI Hyundai Motor Manufacturing Alabama	Team Relations Memo	HR-AL-HR-TR-F-00002
Revision Date: 9-Sept-04	Owner: Team Relations	Revision Level: 00

Past Practice:

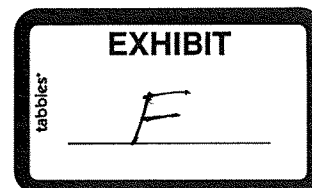
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REDACTED - PRIVILEGED

EXHIBIT
E

**HYUNDAI**

Motor Manufacturing Alabama, LLC
700 Hyundai Blvd.
Montgomery, AL 36105



March 7, 2007

Jerry Leon Dees Jr.
14808 US Hwy 82
Maplesville, AL 36750

Dear Leon:

You were left a phone message on March 2, 2007, stating you had met the contact requirement for Team Member Review. On March 5, 2007 and again on March 7, 2007 you were contacted but a phone-answering machine was reached.

To continue the Team Member Review process you must meet with Rob Clevenger on Monday March 12, 2007 at 10:00am to review the process and select your panel. At that time you will be given the date and time of your review panel meeting. Please come to the security building at gate 3 at the specified time above.

Sincerely,

Wendy Warner
Manager, Employment
Hyundai Motor Manufacturing Alabama, LLC

TM DID NOT
ATTEND THIS
MEETING. HE LEFT
A PHONE MSG ON
SATURDAY 3/10/07
STATING HE RECEIVED THE
LETTER BUT COULD NOT
ATTEND. NO FURTHER
CONTACT FROM MR. DEES

Dees v. HMMA 0321
Docs Produced

11/15/07

Additional Doc Produced JTS

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JERRY LEON DEES, JR.,

Plaintiff,

vs.

HYUNDAI MOTOR MANUFACTURING
ALABAMA, LLC, and HYUNDAI MOTOR
AMERICA, INC.,

Defendants.

CASE NO.
2:07-cv-00306-MHT-CSC

DECLARATION OF KATHY PARKER

1. I, Kathy Parker, am the Vice President, Human Resources and Administrative Services for Hyundai Motor America, Inc. ("HMA"). I am over the age of 18 and have personal knowledge of the information contained in this Declaration.

2. As the Vice President, Human Resources and Administrative Services for HMA, I, among other things, oversee the human resource and administration functions of HMA. As part of this role, I manage and supervise hiring, terminations, employee relations, benefits, and compensation for HMA, and I have access to and regularly review the personnel records of individuals employed by HMA. I also manage and supervise administrative issues related to HMA and its operations, and I have personal knowledge regarding HMA's relationship to Hyundai Motor Manufacturing Alabama, LLC ("HMMA") with respect to personnel and human resources matters.

3. HMA is organized as a corporation in the state of California and has its principal place of business in Fountain Valley, California.

4. HMA is in the business of marketing, selling, and distributing Hyundai-branded automobiles and parts in the United States.

5. HMA and HMMA operate and function as separate companies. Indeed, HMA and HMMA have completely separate human resources departments, and separate employment and business policies and procedures.

6. Jerry Leon Dees, Jr. was not employed by HMA at any time.

7. Mr. Dees did not receive pay, salary, or benefits from HMA at any time.

8. HMA had no influence or control over Mr. Dees' employment opportunities.

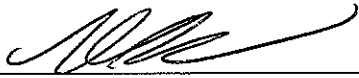
9. In other words, HMA had no involvement, influence, or control in the decision to retain or terminate Mr. Dees or any other decision regarding his employment.

10. Similarly, HMA had no involvement, influence, or control in the establishment of policies or procedures at HMMA, including those related to Mr. Dees' employment.

11. HMA had no employment or other relationship with Mr. Dees.

12. Similarly, HMA had no employment or other relationship with, or right to control or direct, any employees of HMMA.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing information is true and correct. Executed this the 10 day of December, 2007.



Kathy Parker

Exhibit I

2 of 2 DOCUMENTS

Tom Hurst and Linda Hurst v. Mike Cook and Carrie Cook

2060351

COURT OF CIVIL APPEALS OF ALABAMA

2007 Ala. Civ. App. LEXIS 635

September 28, 2007, Released

NOTICE:

THIS OPINION IS SUBJECT TO FORMAL REVISION BEFORE PUBLICATION IN THE ADVANCE SHEETS OF THE SOUTHERN REPORTER.

PRIOR HISTORY: [*1]

Appeal from Cullman Circuit Court. (CV-05-45).
Ex parte Hurst, 914 So. 2d 840, 2005 Ala. LEXIS 73 (Ala., 2005)

DISPOSITION: AFFIRMED IN PART; CERTIFICATION SET ASIDE IN PART; AND REMANDED.

CORE TERMS: counterclaim, summary judgment, written agreement, breach-of-contract, certification, life estate, convey, personal property, real property, tort-of-outrage, malicious-prosecution, abuse-of-process, father-in-law's, outrage, police report, summary-judgment, punitive damages, oral agreement, unenforceable, conveyance, wantonness, signature, final judgment, inappropriate, intertwined, defamation, forgery, quiet, injunctive relief, jury question

JUDGES: THOMAS, Judge. Thompson, P.J., Pittman and Moore, JJ., concur. Bryan, J., concurs in the result, without writing.*

* *Note from the reporter of decisions: When the opinion in this case was released on September 28, 2007, Judge Bryan was inadvertently shown as voting to concur. He actually concurred in the result.

OPINION BY: THOMAS

OPINION

THOMAS, Judge.

Tom Hurst and Linda Hurst and Mike Cook and Carrie Cook had a long-standing friendship that began

more than 11 years ago when the Hursts and the Cooks lived in Florida. The Hursts moved to Alabama in 1995, and, later, the Cooks also made Alabama their home. In August 2003, the Cooks offered to allow the Hursts to live in the Cooks' former house in Hanceville rent free. The Cooks further offered the Hursts the use of the furnishings remaining in the house. According to the Hursts, however, the Cooks told the Hursts that any personal property remaining in the house was the Hursts to do with as they saw fit. The Cooks admit that they considered the possibility of deeding a life estate in the property to the Hursts; however, the Hursts contend that the Cooks promised to deed a life estate in the property to the Hursts. No deed was ever prepared. The Hursts moved into the Cooks' former house in September 2003.

At some point before December 2004, the Cooks decided to sell their former house [*2] and the property surrounding it. In December 2004, the Cooks notified the Hursts that they would need to vacate the premises by February 15, 2005. On or about December 6, 2004, the Hursts filed in the Cullman County Probate Court a written agreement signed by them and Mike Cook. That written agreement read as follows:

"WITNESSETH: That in consideration of the mutual covenants and agreements to be kept and performed upon the part of said parties hereto, respectively as herein stated, [Mike Cook] does hereby covenant and agree that ...:

"I. As of [March 10, 2004], the House and Lower-Apt. and Garage Buildings at 1220 Co. Rd. 548 Hanceville, AL 35077, has my permission to take possession of and to occupy by [sic] my good friends Thomas and Linda Hurst until their deaths. This agreement is a precursor of a Life Estate Agreement promised by [Mike

2007 Ala. Civ. App. LEXIS 635, *

Cook] to [the Hursts], of which [sic] will be issued on or before 6/1/04.

"II. And [the Hursts] covenant[] and agree[] that [they] shall: Pay \$ 1.00 a month in consideration of said agreement. Therefore, \$ 100.00 in cash is given at this time by [the Hursts] to [Mike Cook] in consideration of this agreement. Also, [the Hursts] will have responsibility [*3] of utilities of house and their Apt.-Garage Bldg. only. Also, [the Hursts] will have access to use workshop that is located on the 3rd Acre of said Property.

"III. Other terms to be observed between the parties: When and if the Upper Apt., of said Apt.-Garage Bldg. which will be occupied by Father Robert Cox is ever vacated by him; the entire said Apt.-Garage Bldg. will there-with be solely occupied by the Hurst family. And separately, all home furnishings, appliances, i.e. contents of which were left in Apt.-Garage Bldg. and house by [Mike Cook] are hereby given unconditionally to [the Hursts]."

The Cooks contend that the agreement the Hursts filed is a forgery. Mike Cook made a police report alleging that the Hursts had forged his signature on the written agreement. Although the police began an investigation of the alleged forgery, the police made no arrests as a result of the investigation.

According to the Hursts, while they were moving out of the house on February 16 and 17, 2005, the Cooks orally harassed them and physically threatened them. In addition, the Hursts allege that Carrie Cook, or someone acting on her behalf, broke into the house by breaking a window. The Hursts accused [*4] Carrie Cook of taking some of the Hursts' property, including their telephone-answering machine. The Hursts said that they telephoned the police about the break-in and that the police made Carrie Cook return the stolen items.

Based on the filing of the written agreement in the probate court and the difficulties that ensued in having the Hursts move from the house, the Cooks filed, on January 28, 2005, an action alleging that the Hursts had slandered title to the property, had conspired to defraud the Cooks by forging Mike Cook's signature on the written agreement, and had converted the Cooks' personal property. The Cooks further sought to quiet title to the property, to set aside any purported conveyance to the Hursts, and to eject the Hursts from the property. The

Hursts answered the complaint and asserted malicious-prosecution, abuse-of-process, fraud, negligence, wantonness, intentional-infliction-of-emotional-distress (referred to hereinafter as "the tort-of-outrage"), defamation, and breach-of-contract counterclaims.

The Cooks moved for a summary judgment on their requests to quiet title and to set aside any purported conveyance to the Hursts and on the Hursts' counterclaims. The [*5] trial court entered a summary judgment in favor of the Cooks on the quiet-title claim, determined that the request that any purported conveyance be set aside was moot, and entered a summary judgment in the Cooks' favor on the abuse-of-process, malicious-prosecution, tort-of-outrage, negligence, wantonness, and fraud counterclaims asserted by the Hursts. In addition, although it did not recite in the conclusion of the summary-judgment order that the breach-of-contract counterclaim, which related to both the real property and the personal property mentioned in the written agreement, was being adjudicated, the trial court clearly stated in the summary-judgment order that the Hursts' breach-of-contract counterclaim regarding both the real property and the personal property "must fail" and stated, in regard to the breach-of-contract counterclaim relating to the personal property, that "the Hursts have, at most, an affirmative defense to the Cooks' conversion claim." Finally, the summary-judgment order states that the Hursts are precluded from recovering punitive damages on that portion of their defamation counterclaim based on allegedly libelous statements made by the Cooks. The trial court [*6] certified the summary judgment as a final judgment pursuant to Rule 54(b), Ala. R. Civ. P. The Hursts appealed the summary judgment to the Alabama Supreme Court, which transferred the appeal to this court, pursuant to Ala. Code 1975, § 12-2-7(6).

The Hursts initially challenge the propriety of the trial court's certification of the summary judgment as a final judgment pursuant to Rule 54(b). If the certification of the summary judgment is inappropriate with respect to a particular claim, this court does not have jurisdiction to consider that particular claim on appeal. *Ex parte Simmons*, 791 So. 2d 371, 381 (Ala. 2000) (holding that an interlocutory order disposing of only part of a claim was not subject to being certified pursuant to Rule 54(b) and therefore vacating that portion of this court's judgment purporting to affirm that interlocutory order and, further, considering other issues raised in the appeal and cross-appeal).

The rule itself reads, in pertinent part:

"When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are in-

2007 Ala. Civ. App. LEXIS 635, *

volved, the court may direct the entry of a final judgment [*7] as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. ..."

Rule 54(b). Both this court and our supreme court have considered several times the propriety of a Rule 54(b) certification, and several principles governing the appropriateness of such certifications have been developed.

"In *Moss v. Williams*, 747 So. 2d 905, 907 (Ala. Civ. App. 1999), this court stated:

"Not every order has the requisite element of finality that can trigger the operation of Rule 54(b), Ala. R. Civ. P. *James v. Alabama Coalition for Equity, Inc.*, 713 So. 2d 937 (Ala. 1997). "Rule 54(b) certifications should be made only in exceptional cases and should not be entered routinely." *Parrish v. Blazer Financial Services, Inc.*, 682 So. 2d 1383 (Ala. Civ. App. 1996)."

"Further, "[a]ppellate review in a piecemeal fashion is not favored, and trial courts should certify a judgment as final, pursuant to Rule 54(b), only in a case where the failure to do so might have a harsh effect." *Point Clear Landing Ass'n, Inc. v. Point Clear Landing, Inc.*, 864 So. 2d 369, 371 (Ala. Civ. App. 2003) [*8] (quoting *Harper Sales Co. v. Brown, Stagner, Richardson, Inc.*, 742 So. 2d 190, 192 (Ala. Civ. App. 1999))."

First Southern Bank v. O'Brien, 931 So. 2d 50, 52-53 (Ala. Civ. App. 2005).

Our supreme court has further explained that in cases in which an adjudicated claim and a unadjudicated counterclaim are "so closely intertwined that separate adjudication would pose an unreasonable risk of inconsistent results," Rule 54(b) certification is inappropriate. *Branch v. SouthTrust Bank of Dothan, N.A.*, 514 So. 2d 1373, 1374 (Ala. 1987). In *Branch* the trial court certified a summary judgment on a claim alleging that an obligor had defaulted on a promissory note as a final judgment pursuant to Rule 54(b); the obligor's fraud counterclaim relating to the conduct of the loan officer in securing his signature on the note remained pending in

the trial court. *Branch*, 514 So. 2d at 1373. The supreme court noted:

"Rule 54(b) is properly applied in a situation where the claim and the counterclaim present more than one claim for relief, either of which could have been separately enforced. *Cates v. Bush*, 293 Ala. 535, 307 So. 2d 6 (1975). Under 'appropriate facts,' a partial summary judgment on an original [*9] claim may be finally adjudicated pursuant to Rule 54(b), leaving a counterclaim undecided so that the parties can further litigate the issues presented by the counterclaim."

Id. at 1374. Because the claim for recovery under the promissory note and the counterclaim of fraud in the inducement of the execution of the promissory note were "closely intertwined," the supreme court determined that the situation in *Branch* was not a situation that Rule 54(b) had been designed to cover, and, thus, it set aside the Rule 54(b) certification of the summary judgment. *Id.*

Our supreme court relied on *Branch* recently to set aside another Rule 54(b) certification. *Summerlin v. Summerlin*, 962 So. 2d 170 (Ala. 2007). In *Summerlin* a wife petitioned for injunctive relief to have her husband's remains disinterred from the cemetery in which he had been buried, Serenity Memorial Gardens Cemetery; she claimed that her father-in-law had "unduly pressured" her into agreeing to bury her husband at Serenity Memorial Gardens instead of at Mobile Memorial Gardens, where their son was buried. *Summerlin*, 962 So. 2d at ___, 2007 Ala. LEXIS 11 at *2. The father-in-law filed a breach-of-contract counterclaim [*10] against the wife, alleging that she had entered into a oral contract in which she had agreed to have the husband's remains interred at Serenity Memorial Gardens in exchange for the father-in-law's payment of the burial expenses, that she had later agreed to leave the husband's remains undisturbed in exchange for the father-in-law's allowing her to retain certain personal property for which the husband owed the father-in-law, and that she had breached those agreements by filing her petition for injunctive relief. *Id.* at ___, 2007 Ala. LEXIS 11 at *4. The wife had already moved for a summary judgment at the time the father-in-law filed his counterclaim; the trial court subsequently entered a summary judgment in the wife's favor, ordering that the husband's remains be disinterred from Serenity Memorial Gardens and that they be reinterred at Mobile Memorial Gardens. *Id.* at ___, 2007 Ala. LEXIS 11 at *6. The trial court certified that summary judgment as a final judgment pursuant to Rule 54(b). *Id.*

Our supreme court considered the issue of the appropriateness of the Rule 54(b) certification *ex mero motu*. *Id.* at ___, 2007 Ala. LEXIS 11 at *6. After a discussion of the principles regarding Rule 54(b) certification, the court pointed out that the wife's claim seeking [*11] injunctive relief *appeared* to be a separate and distinct claim from the father-in-law's counterclaim alleging breach of contract. *Id.* at ___, 2007 Ala. LEXIS 11 at *10. The court then stated: "If one looks beyond form, however, [the father-in-law's] breach-of-contract counterclaim is, in substance, a defense to [the wife's] petition for injunctive relief." *Id.* at ___, 2007 Ala. LEXIS 11 at *9. Thus, the court concluded, "[i]n short, the issues presented in [the father-in-law's] counterclaim and those in [the wife's] petition for injunctive relief 'are so closely intertwined with other claims that separate adjudication would pose an unreasonable risk of inconsistent results.'" *Id.* at ___, 2007 Ala. LEXIS 11 at *10 (quoting *Branch*, 514 So. 2d at 1374).

The *Summerlin* court cited *Automatic Liquid Packaging, Inc. v. Dominik*, 852 F.2d 1036, 1038 (7th Cir. 1988), as support for its conclusion that certain counterclaims can be so intertwined as to be inappropriate for Rule 54(b) certification. *Id.* In *Dominik* the federal court considered whether a Rule 54(b) certification on a summary judgment entered on a claim requesting enforcement of a contract was appropriate in light of the pendency of a counterclaim requesting that the contract be voided because it had expired. *Dominik*, 852 F.2d at 1038. [*12] The *Dominik* court concluded that the certification was inappropriate because "[the two claims] are the same claim, expressing the parties' opposed interpretations of the [contract], though configured as a plaintiff's claim in the complaint and as a defense masquerading as a positive claim for relief in the counterclaim." *Id.* Thus, when a counterclaim is in the nature of a defense to a claim raised by the plaintiff, Rule 54(b) certification of a summary judgment on one of those claims is likely inappropriate.

Likewise, certification of a decision addressing only the type of damages recoverable on a certain claim is inappropriate. *Haynes v. Alfa Fin. Corp.*, 730 So. 2d 178, 181 (Ala. 1999). Although Rule 54(b) permits the "entry of a final judgment as to one or more but fewer than all of the claims or parties," it does not permit the trial court to make final an order that does not dispose of an entire claim. *Haynes*, 730 So. 2d at 181. As the court said, "there is no such thing as a 'claim for punitive damages.'" Rather, there are claims on which our law authorizes the trier of fact to impose punitive damages if certain wrongfulness is proved by a sufficient weight of the evidence." *Id.* [*13] (quoting *Hines v. Riverside Chevrolet-Olds, Inc.*, 655 So. 2d 909, 925 (Ala. 1994), *overruled on other grounds*, *State Farm Fire & Cas. Co. v.*

Owen, 729 So. 2d 834 (Ala. 1998)). Thus, a determination that punitive damages are not recoverable on a certain claim does not dispose of a substantive claim and does not give the trial court authority to certify the judgment as final pursuant to Rule 54(b). *Haynes*, 730 So. 2d at 181.

The summary judgment in the present case disposes of a number of claims. It quiets title in the subject property in the Cooks and rejects the malicious-prosecution and abuse-of-process counterclaims asserted by the Hursts against the Cooks that arose out of Mike Cook's swearing out a warrant against the Hursts alleging forgery. The trial court further rejected the Hursts' tort-of-outrage counterclaim based on the various actions taken by the Cooks. The summary judgment also disposed of the negligence, wantonness, and fraud counterclaims asserted by the Hursts. In addition, the trial court determined that the Hursts could not seek punitive damages for that part of their defamation counterclaim that was based on allegedly libelous statements made by the Cooks. Finally, [*14] the trial court rejected the Hursts breach-of-contract counterclaim regarding both the real property and the personal property. ' The claims remaining in the trial court for later adjudication are the Cooks' slander-of-title, ejectment, conspiracy-to-defraud, and conversion claims and the Hursts' defamation counterclaim.

1 The Hursts argue that the trial court did not actually enter a summary judgment on their breach-of-contract counterclaim because the trial court failed to list that counterclaim in the conclusion of the order as one of the claims it had adjudicated. The Cooks contend, however, that the substance of the summary-judgment order makes it clear that the trial court intended to adjudicate the breach-of-contract counterclaim by indicating that the counterclaim "must fail." Rule 58(b), Ala. R. Civ. P., states:

"An order or a judgment need not be phrased in formal language nor bear particular words of adjudication. A written order or a judgment will be sufficient if it is signed or initialed by the judge ... and indicates an intention to adjudicate, considering the whole record, and if it indicates the substance of the adjudication."

Thus, we agree with the Cooks that the breach-of-contract [*15] counterclaim was adju-

dictated by the trial court in their favor in the summary-judgment order.

The trial court's summary-judgment order indicates in its very text that the Hursts' breach-of-contract counterclaim, insofar as it relates to the personal property that was the subject of both the oral and the written agreements, is more appropriately a defense to the Cooks' conversion claim, which seeks damages for the Hursts' conversion of that very property. Thus, we cannot see how the trial court's certification of the summary judgment on the Hursts' breach-of-contract counterclaim insofar as it relates to the personal property does not run afoul of the standard set out in *Branch*, and more recently in *Summerlin*, that a judgment disposing of counterclaims that are in the nature of defenses to an unresolved original claim should not be certified pursuant to Rule 54(b). *Summerlin*, 962 So. 2d at ___, 2007 Ala. LEXIS 11 at *8; *Branch*, 514 So. 2d at 1374. Because the trial court's judgment as to the breach-of-contract counterclaim relating to the personal property was not properly certified, and because the negligence, wantonness, and fraud counterclaims arising from the alleged breach of either the oral or written agreement [*16] to gift the personal property to the Hursts are inextricably intertwined with the breach-of-contract counterclaim relating to the personal property and the conversion claim, the certification of the judgment as to those counterclaims was error as well. In addition, the trial court's judgment regarding the availability of punitive damages on that portion of the Hursts' defamation counterclaim based on allegedly libelous statements made by the Cooks is clearly not subject to being certified as final pursuant to Rule 54(b). *Haynes*, 730 So. 2d at 181.

Because the summary judgment as to those counterclaims was not properly certified, we set aside the certification of finality pursuant to Rule 54(b) insofar as it pertains to the defamation-damages determination and both the breach-of-contract counterclaim and the related tort counterclaims insofar as they relate to the oral or written agreements to gift the personal property, and we remand those counterclaims to the trial court. However, because the other counterclaims resolved by the trial court's summary-judgment order do not appear to be so closely intertwined with the remaining claims that a risk of inconsistent judgments is created by [*17] the certification, we will address the summary judgment on the Cooks' claim seeking to quiet title and on the malicious-prosecution, abuse-of-process, and tort-of-outrage counterclaims asserted by the Hursts. In addition, we will address the Hursts' negligence, wantonness, fraud, and breach-of-contract counterclaims insofar as they relate to the agreement to convey a life estate in the real property.

We review a summary judgment de novo; we apply the same standard as was applied in the trial court. A

motion for a summary judgment is to be granted when no genuine issue of material fact exists and the moving party is entitled to a judgment as a matter of law. Rule 56(c)(3), Ala. R. Civ. P. A party moving for a summary judgment must make a prima facie showing "that there is no genuine issue as to any material fact and that [it] is entitled to a judgment as a matter of law." Rule 56(c)(3); see *Lee v. City of Gadsden*, 592 So. 2d 1036, 1038 (Ala. 1992). If the movant meets this burden, "the burden then shifts to the nonmovant to rebut the movant's prima facie showing by 'substantial evidence.'" *Lee*, 592 So. 2d at 1038 (footnote omitted). "[S]ubstantial evidence is evidence of such weight [*18] and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." *West v. Founders Life Assurance Co. of Florida*, 547 So. 2d 870, 871 (Ala. 1989); see Ala. Code 1975, § 12-21-12(d). Furthermore, when reviewing a summary judgment, the appellate court must view all the evidence in a light most favorable to the nonmovant, and must entertain all reasonable inferences from the evidence that a jury would be entitled to draw. See *Nationwide Prop. & Cas. Co. v. DPF Architects, P.C.*, 792 So. 2d 369, 372 (Ala. 2000); and *Fuqua v. Ingersoll-Rand Co.*, 591 So. 2d 486, 487 (Ala. 1991).

We first note that the Hursts do not make any specific argument that the trial court erred in entering a summary judgment in favor of the Cooks on their claim seeking to quiet title, thus indicating that they have elected to not pursue a reversal of the summary judgment on that claim. See *Tucker v. Cullman-Jefferson Counties Gas Dist.*, 864 So. 2d 317, 319 (Ala. 2003). In fact, the Hursts concede that the written agreement does not meet the requirements of Ala. Code 1975, § 35-4-20, which generally requires conveyances to be in writing, signed [*19] by the contracting party, and attested by one witness, to pass title to the property.² Because the written agreement does not meet the requirements of § 35-4-20, it did not operate to pass title to the real property to the Hursts. *Mississippi Valley Title Ins. Co. v. Hardy*, 541 So. 2d 1057, 1061 (Ala. 1989); see also *Smith v. Smith*, 892 So. 2d 384, 388 (Ala. Civ. App. 2003). The summary judgment on the Cooks' quiet-title claim is therefore affirmed.

2 Section 35-4-20 reads in its entirety:

"Conveyances for the alienation of lands must be written or printed, or partly written and partly printed, on parchment or paper, and must be signed at their foot by the contracting party or his agent having a written authority; or, if he is not able to sign his

name, then his name must be written for him, with the words 'his mark' written against the same, or over it; the execution of such conveyance must be attested by one witness or, where the party cannot write, by two witnesses who are able to write and who must write their names as witnesses; or, if he can write his name but does not do so and his name is written for him by another, then the execution must be attested by two witnesses who can [*20] and do write their names."

In addition, the Hursts make no cognizable argument regarding the summary judgment entered in the Cooks' favor on the malicious-prosecution and abuse-of-process counterclaims. The Hursts' brief argues for a reversal of the summary judgment entered on all of their counterclaims in the aggregate while focusing primarily on the reasons the trial court erred in entering a summary judgment on the breach-of-contract and related tort counterclaims on the basis that the written agreement was unenforceable. Because the malicious-prosecution and abuse-of-process counterclaims are based on Mike Cooks' making a police report reporting the Hursts' alleged forgery of his signature and because the forgery allegation was not at issue in the summary-judgment proceedings, the validity of the written agreement has no bearing on the malicious-prosecution and abuse-of-process counterclaims.

Although the Hursts, in contravention of Rule 28(a)(10), Ala. R. App. P., fail to make any legal argument supported by authority specifically concerning the malicious-prosecution and abuse-of-process counterclaims, we will briefly address the legal merits of the summary judgment on those counterclaims. [*21] See *Kirksey v. Roberts*, 613 So. 2d 352, 353 (Ala. 1993) (explaining that an appellate court may consider an argument that is not compliant with Rule 28(a)(10) if the court is able to adequately discern the issues presented); *Bishop v. Robinson*, 516 So. 2d 723, 724 (Ala. Civ. App. 1987) (explaining that an appellate court may consider an argument that is not compliant with Rule 28(a)(10) when the appellee adequately responds to the issues raised by the appellant in brief despite the noncompliance); and *Thoman Eng'rs, Inc. v. McDonald*, 57 Ala. App. 287, 289, 328 So. 2d 293, 295 (Civ. 1976) (explaining that an appellate court may consider an argument that is not compliant with the predecessor to Rule 28(a)(10) when the argument "has been raised in a manner which is

fair to all concerned"). To recover for the tort of malicious prosecution, a plaintiff is required to prove that the defendant, without probable cause and with malice, initiated legal proceedings against the plaintiff and that the legal proceedings terminated in the plaintiff's favor, yet caused the plaintiff damage. See *Fina Oil & Chem. Co. v. Hood*, 621 So. 2d 253, 256 (Ala. 1993). "The tort of abuse of process differs from [*22] the tort of malicious prosecution; the tort of abuse of process is concerned with 'the wrongful use of process after it has been issued,' while the tort of malicious prosecution is concerned with 'the wrongful issuance of process.'" *Shoney's, Inc. v. Barnett*, 773 So. 2d 1015, 1024 (Ala. Civ. App. 1999). To establish the tort of abuse of process, a plaintiff must prove the existence of an ulterior purpose, the wrongful use of process, and malice. *Barnett*, 773 So. 2d at 1024 (citing *C.C. & J., Inc. v. Hagood*, 711 So. 2d 947 (Ala. 1998)). The only action Mike Cook undertook was to make a police report. No process was issued and no legal proceedings were instituted as a result of the making of the police report. Thus, even viewing the facts in the light most favorable to the Hursts, as we must when reviewing a summary judgment, *Nationwide Prop. & Cas. Co.*, 792 So. 2d at 372, the Hursts simply cannot establish the elements of either tort, and the summary judgment in the Cooks' favor on those counterclaims is therefore affirmed.

The trial court entered a summary judgment in favor of the Cooks on the Hursts' breach-of-contract counterclaim relating to the alleged breach of that portion of [*23] the written agreement pertaining to the real property. The fact that Carrie Cook was not a party to the written agreement formed the basis for the summary judgment in her favor; this undisputed fact precludes any breach-of-contract counterclaim against Carrie Cook. See generally *Ligon Furniture Co. v. O.M. Hughes Ins. Co.*, 551 So. 2d 283, 285 (Ala. 1989) (affirming a summary judgment on a breach-of-contract claim when the defendants were not parties to the contract). The basis of the trial court's summary judgment in Mike Cook's favor was that the written agreement violated the Statute of Frauds, codified at Ala. Code 1975, § 8-9-2, which requires that certain agreements be in writing to be enforceable.³

3 The Statute of Frauds states, in pertinent part:

"In the following cases, every agreement is void unless such agreement or some note or memorandum thereof expressing the consideration is in writing and subscribed by the party to be charged therewith or some other person by him thereunto lawfully authorized in writing:

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"....

"(5) Every contract for the sale of lands, tenements or hereditaments, or of any interest therein, except leases for a term not longer than one year, unless the purchase [*24] money, or a portion thereof is paid and the purchaser is put in possession of the land by the seller"

§ 8-9-2.

However, the written agreement, although not in compliance with § 35-4-20, and therefore unable to convey any title to the property due to this deficiency, meets the requirements of the Statute of Frauds: it is an agreement regarding the intent to convey a life estate in real property that lists the consideration for the agreement and is signed by the party to be charged. The trial court's conclusion that the written agreement runs afoul of the Statute of Frauds appears to be based on the trial court's determination that the written agreement is unenforceable because it is merely an agreement to agree. See *Muscle Shoals Aviation, Inc. v. Muscle Shoals Airport Auth.*, 508 So. 2d 225, 226 (Ala. 1987) (quoting *Clanton v. Bains Oil Co.*, 417 So. 2d 149, 151 (Ala. 1982)) (stating the general rule that ""agreements to later agree are not enforceable"""). Although an agreement to agree is generally unenforceable, such an agreement is enforceable when it is "definite and certain in all of its terms and conditions so that the court can know what the parties agreed upon." *Muscle Shoals Aviation, Inc.*, 508 So. 2d at 228. [*25] The written agreement, which is set out earlier in this opinion, does have terms that are definite and certain and therefore appears to meet the requirements of the exception to the principle that agreements to agree are unenforceable. See *Mobil Oil Corp. v. Schlumberger*, 598 So. 2d 1341, 1345 (Ala. 1992).

However, in a case with marked similarity to this case, our supreme court determined that an action for breach of contract would not lie when only one of the parties holding a joint interest in land was a signatory to the contract. *Obermark v. Clark*, 216 Ala. 564, 114 So. 135 (1927). In *Obermark* F.L. Clark sought to purchase property owned jointly by A.F. Obermark and his sister, Sarah J. Gates. Obermark entered into a contract to sell the property to Clark based, in part, on Clark's assurance that he would secure a similar contract from Gates. Clark failed to secure from Gates a contract to sell her interest in the property. When the property was not conveyed to him, Clark sued Obermark. The supreme court explained

why Obermark could not have breached the contract to sell the property.

"It is a well-settled principle of law that:

"Contracts must be interpreted in the light of the [*26] facts surrounding the parties when they were made. There cannot be a departure from the words of a written contract, they must have their full import and force; but to arrive at the true sense in which the parties employed them, courts of necessity consider the occasion which gave rise to the contract, the relation of the parties, and the object to be accomplished. *Pollard v. Maddox*, 28 Ala. 321 [(1856)]. As is said by Bishop: "The parties speak in their contract from the fountain of their mutual knowledge and if we would properly interpret their words, we must put ourselves exactly in their position, and know just what they mutually know, with neither addition nor abatement." Bishop on Contracts, § 370.' *McGhee et al. v. Alexander et al.*, 104 Ala. 116, 16 So. 148 [(1894)].

"When the contract is considered in the light of the principle just stated, and the pleaded facts, it is clear that the plaintiff, Clark, did not contemplate nor intend to purchase merely the individual half interest of Obermark, but it was his purpose to purchase the entire title. It is equally as clear that Obermark, when he affixed his signature to the alleged contract, did not intend to acquire the interest of [*27] Mrs. Gates, but merely intended to sell his interest in the property and contemplated that Mrs. Gates would become a party to the agreement as to her interest. Under these circumstances it was impossible for Obermark to convey the entire title, and it would be unjust to hold him responsible for a failure to convey the entire title. The contract contemplated and intended to be made was a tripartite contract or agreement to sell, and it was as essential to the finality and completeness of assent that all the parties intended should be bound as it was that all of the terms should be definitely agreed upon. 6 R.C.L. pp. 616, 617, § 37, and authorities cited in note 110 Am. St. Rep. 747."

Obermark, 216 Ala. at 566, 114 So. at 136 (emphasis added). See also *Jones v. McGivern*, 274 Ala. 232, 234, 147 So. 2d 813, 814 (1962) (affirming a trial court's refusal to order specific performance of a husband's contract to sell property jointly owned by him and his wife when the wife never agreed to the sale because to require the husband to convey his interest "would be to require the husband to perform a contract he did not make").

The Hursts state in their affidavits that Mike Cook told them he would [*28] have Carrie Cook sign the written agreement, and it can be reasonably inferred that the Hursts knew that Carrie Cook would also be required to execute the deed to the life estate together with her husband. The Hursts never received a copy of the written agreement with Carrie Cook's signature on it. Nor did the Hursts ever receive a deed conveying a life estate in the property. The written agreement evidences an agreement between Mike Cook and the Hursts that Mike Cook would convey a life estate in the property; it does not indicate that Mike Cook was to convey only his interest in a life estate in the property. Mike Cook cannot convey a life estate in the property to the Hursts; he can convey only his interest in the jointly held property. *Crommelin v. Fain*, 403 So. 2d 177, 181 (Ala. 1981). Mike Cook contracted, however, to convey a life estate in the property in the future by executing a document to that effect, which, to be effective, also required the signature of his wife. Thus, based on *Obermark* and *Jones*, to hold Mike Cook responsible for the breach of a contract to convey a life estate in the property would be unjust; the trial court's summary judgment regarding the Hursts' [*29] breach-of-contract counterclaim as to the real property is affirmed.⁴

4 The Cooks argue in their brief on appeal that the written agreement is unenforceable because of a failure of consideration. The written agreement itself, however, recites consideration for both the future conveyance and the written agreement.

The negligence, wantonness, and fraud counterclaims asserted by the Hursts are based in part on the failure of the Mike Cook to honor the written agreement to convey a life estate in the real property and in part on the failure of the Cooks to honor an oral agreement regarding a life estate in the real property made to the Hursts before the execution of the written agreement.⁵ The trial court based its summary judgment on the tort counterclaims arising out of the written agreement in favor of Carrie Cook on the undisputed fact that she had not signed the agreement and therefore was under no duty to perform under the written agreement. Regarding the tort counterclaims against Mike Cook, the trial court concluded that, because the written agreement was unen-

forceable under the Statute of Frauds, the tort counterclaims were barred by the Statute of Frauds as well. See *Holman v. Childersburg Bancorporation, Inc.*, 852 So. 2d 691, 699-701 (Ala. 2002) [*30] (explaining that the plaintiff's tort claims, including those alleging negligence and fraud, were barred by the Statute of Frauds because to allow a plaintiff to recover in tort the benefit of the bargain he would have obtained had an oral promise running afoul of the Statute of Frauds been performed would render the statute meaningless). Because we have determined that the summary judgment on the breach-of-contract counterclaim relating to the real property should be affirmed, albeit for a slightly different reason than that relied on by the trial court, we affirm the trial court's judgment on the tort counterclaims arising from the breach of the written agreement to convey a life estate in the real property.

5 We note the inconsistencies in the arguments made by the Hursts regarding the tort counterclaims. On the one hand, the Hursts insist that their tort counterclaims are not based on any oral promises that run afoul to the Statute of Frauds, but, on the other hand, they argue that the injuries upon which they base those counterclaims do not stem solely from the execution of and breach of the written agreement but also flow from the Cooks' conduct and representations that induced [*31] the Hursts to abandon their other living arrangements and move into the Cooks' former house before the execution of the written agreement. We will therefore address the tort counterclaims insofar as they relate to both the alleged breach of the written agreement and the alleged breach of the oral promises made by the Cooks before the execution of the written agreement.

Insofar as the negligence, wantonness, and fraud counterclaims arose out of the oral agreement made by the Cooks, we agree with the trial court that the oral agreement to convey a life estate is unenforceable because it violates the Statute of Frauds and that any tort counterclaims based on the oral agreement must fail on that basis. *Holman*, 852 So. 2d at 699-701. Thus, we affirm the trial court's summary judgment on the tort counterclaims insofar as they are based on any oral agreement to convey a life estate made by the Cooks.

The Hursts' tort-of-outrage counterclaim is more difficult to analyze because it is not entirely clear upon which actions taken by the Cooks the counterclaim is premised. As noted above in the discussion about the other tort counterclaims arising out of the Hursts' allegations that the Cooks induced [*32] them to move into the Cooks' former house with an oral agreement that the Cooks would deed a life estate in the real property to the

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Hursts, any recovery by the Hursts in tort would be barred because the Cooks' oral agreement would run afoul of the Statute of Frauds. *See Holman*, 852 So. 2d at 699. Insofar as the Hursts' tort-of-outrage counterclaim is based on Mike Cook's making a police report alleging that the Hursts had forged his name to the written agreement, the Hursts' tort-of-outrage counterclaim also fails.

A plaintiff seeking to establish the tort of outrage bears a heavy burden. "The tort of outrage was not developed to provide a person with a remedy for the trivial emotional distresses that are common to each person in his everyday life." *U.S.A. Oil, Inc. v. Smith*, 415 So. 2d 1098, 1101 (Ala. Civ. App. 1982). As our supreme court has explained:

"This Court first recognized the tort of outrage, or intentional infliction of emotional distress, in *American Road Service Co. v. Inmon*, 394 So. 2d 361 (Ala. 1980). In *Inmon*, the Court held that to present a jury question the plaintiff must present sufficient evidence that the defendant's conduct (1) was intentional or reckless; [*33] (2) was extreme and outrageous; and (3) caused emotional distress so severe that no reasonable person could be expected to endure it. The Court defined the second element of the tort of outrage as follows: 'By extreme we refer to conduct so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society.' *Inmon*, 394 So. 2d at 365 (quoting *Restatement (Second) of Torts*, § 46 cmt. d, at 72 (1948)).

"....

"This court has consistently held that the tort of outrage is a very limited cause of that is available only in the most egregious circumstances.... In fact, in the 12 years since *Inmon* was decided, all cases in which this Court has found a jury question on an outrage claim have fallen within only three categories: 1) cases having to do with wrongful conduct in the context of family burials, see *Whitt v. Hulsey*, 519 So. 2d 901 (Ala. 1987) (reckless desecration of family burial ground by adjacent landowner sufficient to present a jury question as to claim of outrage), *Levite Undertakers Co. v. Griggs*, 495 So. 2d 63 (Ala. 1986) (defendant undertaker's wrongful retention of the re-

mains [*34] of plaintiff's husband to force payment of funeral expenses sufficient to present a jury question as to claim of outrage), and *Cates v. Taylor*, 428 So. 2d 637 (Ala. 1983) (defendant's withdrawal of permission to use a burial plot 30 minutes before the planned burial sufficient to present a jury question on claim of outrage); 2) a case where insurance agents employed heavy-handed, barbaric means in attempting to coerce the insured into settling an insurance claim, *National Security Fire & Cas. Co. v. Bowen*, 447 So. 2d 133 (Ala. 1983); and 3) a case involving egregious sexual harassment, *Busby v. Truswal Systems Corp.*, 551 So. 2d 322 (Ala. 1989)."

Thomas v. BSE Indus. Contractors, Inc., 624 So. 2d 1041, 1043-44 (Ala. 1993).

Even if Mike Cook's decision to make a police report was motivated by malice and his allegation of forgery was entirely false, such actions would not rise to the level of being a proper basis for the tort-of-outrage counterclaim. The circumstances surrounding the making of the police report and the subsequent investigation are far from the most egregious of circumstances, and it is impossible to conclude that Mike Cook's "conduct [was] so outrageous in character and [*35] so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society." *Thomas*, 624 So. 2d at 1043-44. In addition, the Hursts failed to present substantial evidence of any severe emotional distress they suffered as a result of Mike Cook's making of the police report.

The other actions by the Cooks that could form the basis of the Hursts' tort-of-outrage counterclaim are the Cooks' alleged harassment of the Hursts as they moved out of the house and the alleged burglary of the house by Carrie Cook or someone acting on her behalf. The Hursts' description of the harassment they suffered at the hands of the Cooks in their affidavits is generic and does not present substantial evidence creating a fact question regarding whether the conduct of the Cooks was "so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society." *Thomas*, 624 So. 2d at 1043-44. Even if we were to consider the allegation that Carrie Cook or a person acting on her behalf burglarized the house as being sufficient to reach the [*36] level of outrageousness necessary under *Inmon* and its progeny, the Hursts have still failed to present substantial evidence indicating that

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the Cooks' actions "caused emotional distress so severe that no reasonable person could be expected to endure it." *Thomas*, 624 So. 2d at 1043. Thus, we affirm the summary judgment in favor of the Cooks on the Hursts' tort-of-outrage counterclaim.

In conclusion, we set aside the certification of the judgment as to the breach-of-contract counterclaims based on the breach of either the oral or written agreement to gift the personal property remaining in the house to the Hursts, the related tort counterclaims based on the breach of either the oral or written agreement to gift the personal property, and the determination that the Hursts are not entitled to punitive damages on that part of their defamation counterclaim based on allegedly libelous

statements made by the Cooks. We affirm the judgment in favor of the Cooks on their claim seeking to quiet title to the property. We also affirm the judgment on the breach-of-contract counterclaim and related tort counterclaims relating to the oral and written agreements regarding the Cooks' promise to convey [*37] a life estate in the real property to the Hursts. Finally, we affirm the judgment on the malicious-prosecution, abuse-of-process, and tort-of-outrage counterclaims as well.

AFFIRMED IN PART; CERTIFICATION SET ASIDE IN PART; AND REMANDED.

Thompson, P.J., and Pittman and Moore, JJ., concur. Bryan, J., concurs in the result, without writing.*

Exhibit J

1 of 1 DOCUMENT

**ANTONIO R. DAGGETT, SR., Plaintiff, v. CHICAGO TRANSIT AUTHORITY,
Defendant.**

Civil No. 96 CV 05348

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION**

1998 U.S. Dist. LEXIS 18723

**November 18, 1998, Decided
November 25, 1998, Docketed**

DISPOSITION: [*1] Motion for summary judgment filed by defendant Chicago Transit Authority on October 2, 1998 GRANTED. JUDGMENT ENTERED IN FAVOR of defendant Chicago Transit Authority and AGAINST plaintiff Antonio R. Daggett, Sr.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant former employer moved for summary judgment in plaintiff former employee's action alleging sex discrimination, sexual harassment, and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq., and the Uniformed Services and Reemployment Rights Act, 38 U.S.C.S. § 4301 et seq.

OVERVIEW: Plaintiff former employee brought an action against defendant former employer alleging sex discrimination, sexual harassment, and retaliation in violation of Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C.S. § 2000e et seq., and the Uniformed Services and Reemployment Rights Act (USERRA), 38 U.S.C.S. § 4301 et seq., following his termination. Defendant moved for summary judgment, claiming that it had a legitimate non-discriminatory reason for plaintiff's discharge and that plaintiff has failed to show that the reason given was pretextual. The court granted summary judgment for defendant, holding that plaintiff failed to establish a violation of Title VII or USERRA. The court concluded that defendant presented sufficient evidence to show that on numerous occasions plaintiff was insubordinate, which was the legitimate non-discriminatory reason for his termination.

OUTCOME: Summary judgment was granted for defendant former employer because plaintiff former em-

ployee failed to show a violation of Title VII of the Civil Rights Act of 1964 or the Uniformed Services and Reemployment Rights Act.

CORE TERMS: insubordination, termination, summary judgment, military, hostile, warned, audit, suspended, work environment, sexual harassment, prima facie case, suspension, misconduct, harassment, non-moving, terminated, causal, sex, assigned, discriminatory, retaliation, motivating, pervasive, workplace, genuine, notice, sexual, severe, warning, employment decisions

LexisNexis(R) Headnotes

Civil Procedure > Summary Judgment > Standards > Appropriateness

Civil Procedure > Summary Judgment > Standards > Genuine Disputes

Civil Procedure > Summary Judgment > Standards > Materiality

[HN1] Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Fed. R. Civ. P. 56(c)*. However, *Fed. R. Civ. P. 56(c)* is not a requirement that the moving party negate his opponent's claim. *Fed. R. Civ. P. 56(c)* mandates the entry of summary judgment, after adequate time for discovery, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and in which that party will bear the burden of proof at trial.

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***Civil Procedure > Summary Judgment > Evidence
Civil Procedure > Summary Judgment > Opposition >
General Overview***

***Civil Procedure > Trials > Judgment as Matter of Law
> Directed Verdicts***

[HN2] The standard for granting summary judgment mirrors the directed verdict standard under *Fed. R. Civ. P. 50(a)*, which requires the court to grant a directed verdict where there can be but one reasonable conclusion. A scintilla of evidence in support of the non-moving party's position is not sufficient to successfully oppose summary judgment; there must be evidence on which the jury could reasonably find for the plaintiff. No genuine issue for trial exists where the record as a whole could not lead a rational trier of fact to find for the nonmoving party.

***Civil Procedure > Summary Judgment > Motions for
Summary Judgment > General Overview***

***Civil Procedure > Summary Judgment > Opposition >
General Overview***

***Civil Procedure > Summary Judgment > Supporting
Materials > General Overview***

[HN3] On a motion for summary judgment, initially, *Fed. R. Civ. P. 56* requires the moving party to inform the court of the basis for the motion, and to identify those portions of the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, which demonstrate the absence of a genuine issue of material fact. The non-moving party may oppose the motion with any of the evidentiary materials listed in *Fed. R. Civ. P. 56(c)*, but reliance on the pleadings alone is not sufficient to withstand summary judgment.

***Civil Procedure > Summary Judgment > Burdens of
Production & Proof > Movants***

***Civil Procedure > Summary Judgment > Standards >
Genuine Disputes***

[HN4] On a motion for summary judgment, to establish a genuine issue of fact, the non-moving party must do more than simply show that there is some metaphysical doubt as to the material facts. The non-moving party must come forward with specific facts showing that there is a genuine issue for trial. A summary judgment determination is essentially an inquiry as to whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.

***Civil Procedure > Summary Judgment > General Over-
view***

Labor & Employment Law > Discrimination

[HN5] In employment discrimination matters, the standard on summary judgment is applied with added rigor.

***Labor & Employment Law > Discrimination > Har-
assment > Sexual Harassment > Employment Practices
> Compensation***

***Labor & Employment Law > Discrimination > Har-
assment > Sexual Harassment > Quid Pro Quo***

***Labor & Employment Law > Discrimination > Title VII
of the Civil Rights Act of 1964 > General Overview***

[HN6] Under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C.S. § 2000e et seq., it is an unlawful employment practice for an employer to discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. 42 U.S.C.S. § 2000e-2(a)(1). Within this statutory definition, Title VII prohibits two forms of sexual harassment in the workplace: (1) quid pro quo and (2) hostile environment.

***Labor & Employment Law > Discrimination > Har-
assment > Sexual Harassment > Hostile Work Envi-
ronment***

[HN7] To make out a hostile work environment claim, the conduct at issue must have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. To determine whether the plaintiff's work environment is hostile within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq., courts consider a variety of factors, including, the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The focus is necessarily on the totality of the circumstances, no single factor is required.

***Criminal Law & Procedure > Criminal Offenses >
Crimes Against Persons > Coercion > Elements***

***Labor & Employment Law > Discrimination > Har-
assment > Sexual Harassment > Burdens of Proof >
Severe & Pervasive Standards***

***Labor & Employment Law > Discrimination > Title VII
of the Civil Rights Act of 1964 > General Overview***

[HN8] Not all workplace conduct that may be described as harassment affects a term, condition or privilege of employment within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq. For sexual harassment to be actionable, it must be sufficiently severe or pervasive to alter the conditions of the victim's

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employment and create an abusive working environment. Thus, relatively isolated instances of non-severe misconduct will not support a hostile environment claim.

Labor & Employment Law > Discrimination > Harassment > Sexual Harassment > Hostile Work Environment

[HN9] Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment -- an environment that a reasonable person would not find hostile or abusive -- is beyond Title VII of the Civil Rights Act of 1964's (Title VII), 42 U.S.C.S. § 2000e et seq., purview. Likewise, if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is not a Title VII violation.

Labor & Employment Law > Discrimination > Harassment > Sexual Harassment > Burdens of Proof > Employee Burdens

Labor & Employment Law > Discrimination > Harassment > Sexual Harassment > Coverage & Definitions > Sexual Harassment

Labor & Employment Law > Discrimination > Harassment > Sexual Harassment > Employment Practices > General Overview

[HN10] In a case of quid pro quo harassment, submission to a supervisor's sexual demands is made a condition of tangible employment benefits. A test which is useful in analyzing such claims requires asking whether the plaintiff has shown (1) that she or he is a member of a protected group, (2) the sexual advances were unwelcome, (3) the harassment was sexually motivated, (4) the employee's reaction to the supervisor's reaction affected a tangible aspect of her employment, and (5) respondeat superior has been established.

Labor & Employment Law > Discrimination > Disparate Treatment > General Overview

[HN11] The issue of pretext does not address the correctness or desirability of reasons offered for employment decisions. Rather, it addresses the issue of whether the employer honestly believes in the reasons it offers. Pretext means a lie, specifically some phony reason for some action. A plaintiff may accomplish this showing with evidence tending to prove that the employer's proffered reasons are factually baseless, were not the actual motivation for the decision in question, or were insufficient to motivate the decision. These formulations are simply different ways of recognizing that when the sincerity of an employer's asserted reasons for an adverse

decision is cast into doubt, a factfinder may reasonably infer that unlawful discrimination was the true motivation: if the only reason an employer offers is a lie the inference that the real reason was a forbidden one may rationally be drawn.

Labor & Employment Law > Discrimination > Disparate Treatment > General Overview

Labor & Employment Law > Discrimination > Gender & Sex Discrimination > Proof > Circumstantial & Direct Evidence

[HN12] Where there is no direct evidence which would support such a contention, to establish a sexual discrimination claim, a plaintiff would have to successfully navigate the course of the McDonnell Douglas shifting burdens analysis. Under the burden shifting approach, plaintiff must initially establish a prima facie case which includes a showing that (1) he was a member of a protected group; (2) he was doing his work well enough to meet defendant's legitimate expectation; (3) he was discharged despite his performance; and (4) defendant sought a replacement for him.

Evidence > Procedural Considerations > Burdens of Proof > Allocation

Evidence > Procedural Considerations > Burdens of Proof > Ultimate Burden of Persuasion

Labor & Employment Law > Discrimination > Disparate Treatment > General Overview

[HN13] To raise an inference of discrimination, the fundamental requirement is that a Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq., plaintiff must show that as a member of a protected class he was treated differently than similarly situated others outside the class. If the plaintiff is successful in establishing a prima facie case, a rebuttable presumption of discrimination is created and the burden of production shifts to the defendant to produce some legitimate nondiscriminatory reason for the challenged employment decision. If the defendant produces the legitimate nondiscriminatory reason, the burden shifts back to the plaintiff to prove by a preponderance of the evidence that the reasons offered by the defendant were a pretext for discrimination. Of course, the ultimate burden of persuasion (not production) rests with the plaintiff at all times.

Labor & Employment Law > Collective Bargaining & Labor Relations > Unfair Labor Practices > Interference With Protected Activities

Labor & Employment Law > Discrimination > Actionable Discrimination

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Labor & Employment Law > Discrimination > Title VII of the Civil Rights Act of 1964 > General Overview

[HN14] Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq., prohibits retaliation for opposing practices which are discriminatory. It does so by making it an unlawful employment practice for an employer to discriminate against any of his employees because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under the subchapter. 42 U.S.C.S. § 2000e-3. To establish a prima facie case of retaliation, plaintiff must show (1) that he engaged in protected activity; (2) that an adverse employment action occurred; and (3) that there exists a causal link between the protected activity and the adverse employment action.

Labor & Employment Law > Discrimination > Retaliation > General Overview

[HN15] Generally, a plaintiff claiming retaliation may establish a causal connection through evidence that the discharge took place on the heels of the protected activity. However, as the temporal distance between the claimant's protected expression and the adverse action increases, it is less likely that there is a causal link between the two events. The causal nexus is sufficiently demonstrated when the time period between the filing of the complaint and the adverse action is one day or one week.

Labor & Employment Law > Discrimination > Actionable Discrimination***Military & Veterans Law > Veterans > Benefits > Employment******Pensions & Benefits Law > Equal Protection > Veterans***

[HN16] The Uniformed Services and Reemployment Rights Act (USERRA), 38 U.S.C.S. § 4301 et seq., forbids employment discrimination on the basis of membership in the armed forces, 38 U.S.C.S. § 4311(a), and authorizes private suits for damages or injunctive relief against the employer. An employer violates USERRA by denying an employment benefit where the employee's membership or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership or obligation for service. 38 U.S.C.S. § 4311(c)(1).

Labor & Employment Law > Discrimination > Actionable Discrimination***Military & Veterans Law > Veterans > Benefits > Employment******Pensions & Benefits Law > Equal Protection > Veterans***

[HN17] The burden-shifting scheme applicable to cases under the National Labor Relations Act applies to Uniformed Services and Reemployment Rights Act (USERRA), 38 U.S.C.S. § 4301 et seq., claims. Under that scheme the plaintiff must initially prove that his military status was a motivating factor in the defendant's adverse employment decision. Upon such a showing, the burden then shifts to the defendant to prove that it would have made the same decision regardless of plaintiff's military status.

COUNSEL: ANTONIO R DAGGETT, SR, plaintiff, Pro se, Chicago, IL.

For CHICAGO TRANSIT AUTHORITY, defendant: Kathleen Hope Herrmann, Julie Lynn Trester, Patience R. Nelson, Chicago Transit Authority, Corporate Law Department, Chicago, IL.

JUDGES: William C. Lee, Visiting Judge, United States District Court.

OPINION BY: William C. Lee

OPINION**MEMORANDUM OF DECISION AND ORDER**

This matter is before the Court on a motion for summary judgment filed by the defendant Chicago Transit Authority on October 2, 1998. ¹ Plaintiff pro se responded to that motion with an "Affidavit of Antonio R. Daggett, Sr. In Support of Plaintiff's Motion for Jury Trial and Denial of Defendant's Motion for Summary Judgment in Favor of Defendant." For the following reasons, defendant's motion will be granted.

1 Accompanying its motion for summary judgment, the defendant filed a "Notice of Motion for Summary Judgment" pursuant to *Lewis v. Faulkner*, 689 F.2d 100 (7th Cir. 1982) which informed plaintiff of his opportunity to respond with affidavits or other documentary evidence.

[*2] Factual Background

The following are the relevant facts as set forth by the defendant and to which plaintiff in his response to the motion for summary judgment has not objected:

Plaintiff is a male and an officer in the United States Army Reserves. He was hired by the defendant in April 1991 as a Senior Internal Auditor. His immediate super-

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visor was Alex R. Petska, Manager of Internal Audit Department with ultimate supervisory authority being in the hands of Dorothy A. Brown, General Auditor.²

2 Petska reported to Brown.

The defendant has a General Rule Book which is given to all employees. Among other things, the rule book requires employees to know the rules and obey all orders, rules bulletins and instructions. Additionally the rule book specifically prohibits insubordination.

Almost from the inception of his employment until the time of his termination on May 31, 1995, plaintiff was disciplined repeatedly for refusing to obey directives and for insubordination. Chronologically, the prohibited [*3] acts and discipline were as follows:

-->On January 28, 1992, plaintiff received a three day suspension as a result of insubordination for his refusal to perform assigned duties. He was informed that continued insubordination could result in discharge.

-->Less than two months later, on March 23, 1992, plaintiff was suspended for four days as a result of his refusal to provide requested audit plan schedules. Said suspension was to take effect after a meeting on the morning of March 24, 1992.

-->On March 25, 1992, plaintiff's suspension was extended by an additional day because he did not attend the meeting of the previous day. Plaintiff was instructed to report to the General Auditor's office on March 31, 1992.

-->On March 31, 1992, the time his most recent suspension was to terminate, plaintiff did not report to work and was considered absent without leave. He was sent a letter requesting that he report and explain his absence.

-->On April 1, 1992, plaintiff was suspended for two days as a result of insubordinate actions during a meeting with the General Auditor. He left the meeting prior to their being a discussion about his AWOL status and other matters.

-->As [*4] a result of his AWOL status and repeated insubordination, plaintiff was placed on probation for ninety days commencing April 6, 1992. He was warned that future insubordination or

similar misconduct could result in termination.

-->On September 9, 1993, plaintiff was again given a written warning for insubordination as a result of his refusal to complete an assignment and again he was warned that insubordination or failure to follow directives could result in termination.

-->Approximately three months later, on December 8, 1993, plaintiff was given another written warning for insubordination as a result of his failure to complete an assignment. He was once again warned that future such dereliction of duties could result in termination.

-->Less than two weeks later, on December 21, 1993 plaintiff was warned again in writing about insubordination and told that such conduct could result in termination because of his continued refusal to work on the Data Center Audit.

-->The following day, December 22, 1993, plaintiff was suspended one day for insubordination as a result of his refusal to work on the Data Center Audit and he was again warned that such insubordination [*5] could result in termination.

-->Three days later, December 24, 1993, plaintiff was suspended for five days for insubordination as a result of his failure to work on the Data Center Audit. He was again warned that continued refusal to perform assigned tasks could result in termination.

-->On January 3, 1994 both Brown and Petska met with plaintiff about his insubordination. Plaintiff agreed to work with an outside consultant on the Data Center Audit and was told that further failure to cooperate would constitute insubordination.

-->On December 16, 1994, plaintiff walked out on a meeting with Brown and Petska. Petska informed plaintiff that such conduct constituted insubordination but that if he immediately returned to the meeting he would not be suspended. Plaintiff did not return to the meeting. Three days later plaintiff was given a "Notice of Pre-Disciplinary Hearing" as a result of his walking out of the meeting.

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-->On December 21, 1994, a hearing was held to allow plaintiff to provide an explanation for his walking out of the meeting. On December 28, 1994, as a result of the hearing, plaintiff was suspended for thirty days and again advised that future insubordination [*6] could result in termination.

-->Beginning in February 1995, plaintiff was asked to prepare a memorandum summarizing his work on a Transportation Displays Incorporated audit. That memorandum was not done by April 7, 1995 and Petska then asked in writing that the memorandum be completed by April 14, 1995. On May 26, 1995, the memorandum had still not been supplied and a new deadline of May 30, 1995 was imposed. On May 30, 1995, the memorandum was not completed and that morning plaintiff was reminded that he had until the end of the day to complete it. When he did not he was given a "Notice of Hearing" for insubordination.

-->On May 31, 1995 a disciplinary hearing was held to determine why plaintiff did not complete the Transportation Display Incorporated memorandum given the repeated extensions of deadlines he had been afforded. At the conclusion of the hearing, Brown decided to terminate plaintiff's employment as a result of his insubordination and refusal to perform assigned work.

As indicated, plaintiff was a member of the Army Reserves and over the years he requested leave to fulfill his military obligations. Except for his last request, all were granted: plaintiff [*7] requested and received seven days of leave in 1991, requested and received twelve days of leave in 1992, requested and received another twelve days leave later in 1992, requested and received eighty-eight days of leave in 1993 and requested and received fifty days in 1994. On May 25, 1995, he submitted a leave request but that application did not contain the original military orders as required by defendant's regulations and accordingly was returned with a request that the original military orders accompany the application. Plaintiff was fired shortly thereafter.

In his filing in opposition to the motion for summary judgment, plaintiff does not dispute the foregoing dismal

work history nor does he dispute that he had been granted leave for reserve duty on all occasions save his last request. Indeed, omitting caption and prefatory language, his affidavit in response to the motion for summary judgment reads as follows:

2. I was employed by the Chicago Transit Authority ('CTA') as a Senior Internal Auditor in the Internal Auditing Department. I was employed there from April 91 to May 95.

3. At all time relevant to the matters in above-mentioned case, Dorothy A. Brown ('Ms. [*8] Brown') directly supervised, and consistently barred me (Plaintiff) from the office to which I was assigned and hired to work; because I refused to have sex with her to maintain my employment with 'CTA.'

4. In not one but on two occasions, September 1995 and January 1996, verbal sworn testimony was taken from plaintiff, and the attorneys and witnesses for CTA (under oath) before a State of Illinois Hearing Judge (or Officer); and it was determined that no misconduct on my (plaintiff's) part has led to the termination of my employment with CTA. It was also determined that my testimony of the facts about the nature of Ms. Brown's pervasive sexual harassment of me, was that the nature of the harassment was one-on-one and therefore could only speak to the issue of the credibility on the part of each litigant. In both of the scheduled hearings my testimony was found to be credible. (See Discovery Document for the rulings on both hearings).

(Daggett Aff. PP 2-4).³ As will be seen, such a response is wholly insufficient to overcome defendant's motion for summary judgment.

3 What "Discovery Documents" plaintiff is referring to is unclear. In any event, whatever determination may or may not have been made by a "Illinois Hearing Judge (or Officer)" would not appear to be directly related to the issue before the court--to wit whether plaintiff was the subject of discrimination in violation of federal law and moreover would not absolve plaintiff of his responsibility of setting forth facts sufficient to

withstand the presently pending motion for summary judgment.

[*9] Application of Law

Plaintiff's complaint in this Court alleges violations of Title VII by asserting that he was the subject of sex discrimination and sexual harassment and that his refusal to have sexual relations with Brown was the motivating factor in his termination. He also asserts that he was discharged in retaliation for opposing discriminatory treatment. Finally he asserts that defendant's conduct violated the Uniform Services Employment and Reemployment Act of 1994. After a review of the standards governing summary judgment, plaintiff's substantive claims will be considered in turn.

I. Summary Judgment Standards

[HN1] Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Fed. R. Civ. P. 56(c)*. However, *Rule 56(c)* is not a requirement that the moving party negate his opponent's claim. *Fitzpatrick v. Catholic Bishop of Chicago*, 916 F.2d 1254, 1256 (7th Cir. 1990). *Rule 56(c)* mandates the entry of summary judgment, after adequate [*10] time for discovery, against a party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and in which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552-53, 91 L. Ed. 2d 265 (1986). [HN2] The standard for granting summary judgment mirrors the directed verdict standard under *Rule 50(a)*, which requires the court to grant a directed verdict where there can be but one reasonable conclusion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986). A scintilla of evidence in support of the non-moving party's position is not sufficient to successfully oppose summary judgment; "there must be evidence on which the jury could reasonably find for the plaintiff." 106 S. Ct. at 2512; *In Re Matter of Wildman*, 859 F.2d 553, 557 (7th Cir. 1988); *Klein v. Ryan*, 847 F.2d 368, 374 (7th Cir. 1988); *Valentine v. Joliet Township High School District No. 204*, 802 F.2d 981, 986 (7th Cir. 1986). No genuine issue for trial exists "where the record as a whole could not lead a rational trier of fact to find for the nonmoving party." [*11] *Juarez v. Ameritech Mobile Communications, Inc.*, 957 F.2d 317, 322 (7th Cir. 1992)(quoting *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)).

[HN3] Initially, *Rule 56* requires the moving party to inform the court of the basis for the motion, and to identify those portions of the "pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, which demonstrate the absence of a genuine issue of material fact, *Celotex*, 477 U.S. at 323, 106 S. Ct. at 2553. The non-moving party may oppose the motion with any of the evidentiary materials listed in *Rule 56(c)*, but reliance on the pleadings alone is not sufficient to withstand summary judgment. *Goka v. Bobbitt*, 862 F.2d 646, 649 (7th Cir. 1988); *Guenin v. Sendra Corp.*, 700 F. Supp. 973, 974 (N.D. Ind. 1988); *Posey v. Skyline Corp.*, 702 F.2d 102, 105 (7th Cir.), cert. denied, 464 U.S. 960, 78 L. Ed. 2d 336, 104 S. Ct. 392 (1983). In ruling on a summary judgment motion the court accepts as true the non-moving party's evidence, draws all legitimate inferences in favor of the non-moving party, [*12] and does not weigh the evidence or the credibility of witnesses. *Anderson*, 477 U.S. at 249-251, 106 S. Ct. at 2511. However, "it is a gratuitous cruelty to parties and their witnesses to put them through the emotional ordeal of a trial when the outcome is foreordained" and in such cases summary judgment is appropriate. *Mason v. Continental Illinois Nat'l Bank*, 704 F.2d 361, 367 (7th Cir. 1983).

[HN4] To establish a genuine issue of fact, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586, 106 S. Ct. at 1356; *First National Bank of Cicero v. Lewco Securities Corp.*, 860 F.2d 1407, 1411 (7th Cir. 1988). The non-moving party must come forward with specific facts showing that there is a genuine issue for trial. *Id.* A summary judgment determination is essentially an inquiry as to "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-252, 106 S. Ct. at 2512. [HN5] In employment discrimination matters, the standard on summary judgment is applied with [*13] "added rigor." *Sarsha v. Sears, Roebuck & Co.*, 3 F.3d 1035, 1038 (7th Cir. 1993).

II. Title VII

A. Sexual Harassment

[HN6] Under Title VII it is an unlawful employment practice for an employer to discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1). Within this statutory definition, Title VII prohibits two forms of sexual harassment in the workplace: (1) *quid pro quo* and (2) hostile envi-

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ronment, see *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 64-65, 106 S. Ct. 2399, 2404, 91 L. Ed. 2d 49 (1986).

[HN7] To make out a hostile work environment claim, the conduct at issue must "have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." *Saxton v. American Tel. Tel. Co.*, 10 F.3d 526, 533 (7th Cir. 1993) (citing *Meritor Sav. Bank*, 477 U.S. at 65, 106 S. Ct. at 2404-05 (quoting 29 C.F.R. § 1604.11(a)(3) (1985))).⁴ To determine whether the plaintiff's work environment is hostile [*14] within the meaning of Title VII, courts consider a variety of factors, including, "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Saxton*, 10 F.3d at 534. The focus is necessarily on the totality of the circumstances, "no single factor is required." *Id.*⁵

4 As the United States Supreme Court in *Meritor* explained:

Of course...not [HN8] all workplace conduct that may be described as "harassment" affects a "term, condition or privilege" of employment within the meaning of Title VII. For sexual harassment to be actionable, it must be sufficiently severe or pervasive "to alter the conditions of [the victim's] employment and create an abusive working environment."

Meritor Sav. Bank, 477 U.S. at 67, 106 S. Ct. at 2405 (citations omitted). Thus, "relatively isolated" instances of non-severe misconduct will not support a hostile environment claim. *Weiss*, 990 F.2d 333, 337 (citations omitted).

5 The above-mentioned factors are analyzed both subjectively and objectively. Courts will consider not only the effect the discriminatory conduct actually had on the plaintiff, but also the impact it likely would have had on a reasonable employee in her position. *Saxton*, 10 F.3d at 534, citing *Harris*, 510 U.S. 17, 126 L. Ed. 2d 295, 114 S. Ct. 367 at 370. [HN9] Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment -- an environment that a reasonable person would not find hostile or abusive -- is beyond Title VIII's purview. Likewise, if the victim does not subjec-

tively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is not a Title VII violation. *Id.* See also, *Daniels v. Essex Group, Inc.*, 937 F.2d 1264, 1271-72 (7th Cir. 1991); *King v. Board of Regents of the Univ. of Wis. Sys.*, 898 F.2d 533, 537 (7th Cir. 1990); *Brooms v. Regal Tube Co.*, 881 F.2d 412, 419 (7th Cir. 1989)(footnote omitted).

[*15] In the present matter, plaintiff has wholly failed to show that the atmosphere at his place of employment was severe or pervasive enough to create an objectively hostile environment. There are but two instances of alleged harassment by his supervisor--May 23 and May 26, 1995⁶ and both of those relate to innocuous comments.

6 Allegations of sexual harassment preceding May 17, 1995 were ordered stricken by Minute Order of Judge Manning dated February 23, 1998.

Yet even if what plaintiff alleges was said to him is true and Brown did "indicate[] [that] if I was willing to sleep with her, then I would not be terminated," this would not constitute a "hostile work environment" within the meaning of Title VII. This is so because the alleged conduct of Brown was not sufficiently severe or pervasive enough to alter plaintiff's employment conditions or unreasonably interfere with his work performance.

The concept of sexual harassment is designed to protect employees from the kind of attentions "that can make the [*16] workplace hellish..." and "is not designed to purge the workplace of vulgarity." *Baskerville v. Culligan International Co.*, 50 F.3d 428, 430 (7th Cir. 1995). The two incidents, days apart, wholly fail to establish a "hellish workplace" or that the conduct at issue was "severe or persuasive enough to create an objectively hostile work environment." *Saxton*, 10 F.3d at 534.⁷ This case present much less in the way of evidence than cases such as *Koelsch v. Beltone Electric Corp.*, 46 F.3d 705 (7th Cir. 1995), *Saxton*, *supra* and *Weiss v. Coca-Cola Bottling Co.*, 990 F.2d 333 (7th Cir. 1993) where the allegations were found to be insufficient to support a hostile work environment claim.⁸

7 Plaintiff's claim also falters because he has failed to link the allegedly offensive conduct to his sex by anything other than his own self-serving allegations. See, *Cliff v. Board of School Comm'n*, 42 F.3d 403, 408 (7th Cir. 1994).

8 In *Koelsch*, plaintiff asserted a hostile work environment claim by alleging that the company's president on one occasion took his shoe off and

rubbed his foot against her leg, that he once grabbed her buttocks, that he asked her to accompany him for dinner and drinks, and that he once explained he could not help himself when he was in her presence. In *Saxton*, the conduct involved two incidents of alleged inappropriate remarks and touching. In *Weiss*, the alleged conduct included several incidents of unwanted touching, attempts to kiss plaintiff, asking her out on dates and placing "I love you" signs on her work station.

[*17] Nor can it be said that the activity of which plaintiff complains amounted to *quid pro quo* harassment. [HN10] In a case of *quid pro quo* harassment, "submission to a supervisor's sexual demands is made a condition of tangible employment benefits." *Perry v. Harris Chernin, Inc.*, 126 F.3d 1010, 1013 (7th Cir. 1997). It has been indicated by the Seventh Circuit that a test which is useful in analyzing such claims requires "asking whether the plaintiff has shown (1) that she or he is a member of a protected group, (2) the sexual advances were unwelcome, (3) the harassment was sexually motivated, (4) the employee's reaction to the supervisor's reaction affected a tangible aspect of her employment, and (5) respondeat superior has been established." *Bryson v. Chicago State University*, 96 F.3d 912, 915 (7th Cir. 1996).

For present purposes, defendant has assumed that plaintiff can establish a *prima facie* case. It argues, however, that there was a legitimate non-discriminatory reason for his discharge and that plaintiff has failed to show that the reason given was pretextual. This Court agrees.

There is no doubt that insubordination is a legitimate reason for discharge. *See, McClendon* [*18] *v. Indiana Sugars Inc.*, 108 F.3d 789 n. 7 (7th Cir. 1997) ("In the past we [the Seventh Circuit] have agreed with assessments by the district courts that insubordination can be a valid non-discriminatory reason for discharge (collecting cases); *Edwards v. Interboro Institute*, 840 F. Supp. 222, 230 (E.D.N.Y. 1994) ("blatant employee insubordination is a legitimate reason for terminating employment"); *Futrell v. J.I. Case*, 838 F. Supp. 401, 407 (E.D.Wis. 1993) (same) *rev'd. on other grounds*, 38 F.3d 342 (7th Cir. 1994); *Bills v. Sunshine Wireless Co.*, 824 F. Supp. 60, 63 (E.D. Va. 1993) (same) *aff'd*, 14 F.3d 593 (4th Cir. 1994).⁹ Here there is ample evidence that on numerous occasions, plaintiff was insubordinate.

⁹ It should further be noted that "an employee's 'performance' is not necessarily confined to an appraisal of his or her substantive work." *Oates v. Discovery Zone*, 116 F.3d 1161, 1171 (7th Cir. 1997). "It almost goes without saying that an employer has a legitimate interest in insuring that

each employee's work continues at a steady pace to meet the employer's production needs. Reliability and promptness are important considerations in maintaining a work force." *Rush v. McDonald's Corp.*, 966 F.2d 1104, 1114 (7th Cir. 1992).

[*19] The record before the Court reflects that from the beginning 1992 until the end of 1994, plaintiff was suspended for refusing to perform assigned duties on seven occasions. During that period he received over 45 days of suspension. He received numerous warning during this period that future acts of insubordination could result in discharge or discipline. Nonetheless, his work performance did not improve.

On February 9, 1995, plaintiff was requested to submit a memorandum for the Transportation Displays Incorporated audit. When that work was not forthcoming by April 7, 1995, plaintiff was given until April 14, 1995 to complete the project. More than one month later the work had not been done and so, on May 26, 1995, plaintiff was given a copy of the April 7 written request, told to do the project, and given until May 30, 1995. On that day he was again approached and reminded that the project was to be completed by the end of the day. It was not completed and plaintiff was given a "Notice of Hearing" which stated that a hearing would be held on May 31, 1995 but further provided that if the memorandum was brought to the hearing, "it will cure this notice." He failed to bring the memorandum [*20] to the hearing and was fired that same date.

Clearly the foregoing facts present a legitimate non-discriminatory reason for plaintiff's discharge. On numerous occasions he was suspended for insubordination, he was repeatedly warned that such misconduct could result in termination and despite such suspensions and warnings he continued to fail to complete assigned tasks. Plaintiff has wholly failed to show that the stated reasons were, in fact, pretextual.

"[HN11] The issue of pretext does not address the correctness or desirability of reasons offered for employment decisions." *Kralman v. Ill. Dept. of Veterans Affairs*, 23 F.3d 150, 156 (7th Cir. 1994). "Rather, it addresses the issue of whether the employer honestly believes in the reasons it offers." *Id.*

"Pretext...means a lie, specifically some phony reason for some action." *Russell v. Acme-Evans Co.*, 51 F.3d 64, 68 (7th Cir. 1995). "[A] plaintiff may accomplish this showing with evidence tending to prove that the employer's proffered reasons are factually baseless, were not the actual motivation for the [decision] in question, or were insufficient to motivate the [decision]." *Testerman v. EDS Technical Products Corp.*, [*21] 98 F.3d 297, 301 (7th Cir. 1996). "These formulations are

simply different ways of recognizing that when the sincerity of an employer's asserted reasons for [an adverse decision] is cast into doubt, a factfinder may reasonably infer that unlawful discrimination was the true motivation: 'If the only reason an employer offers... is a lie the inference that the real reason was a forbidden one... may rationally be drawn.'" *Id.* (quoting *Shager v. Upjohn Co.*, 913 F.2d 398, 401 (7th Cir. 1990).

Here, there is no showing that the employer's proffered reason--insubordination--was factually baseless in that plaintiff has forwarded no evidence which would suggest that the record of his work (or lack thereof) was inaccurate or that it would be insufficient to form the basis for a discharge. Nor has he presented any evidence other than conclusory statements which would support his apparent contention that the real reason for his termination was his failure to engage in a sexual relationship with his boss.¹⁰

10 In his deposition, plaintiff suggested that he thwarted the advances of Brown on May 23 and May 26 and that it was those actions which served as the real reason for his discharge. As defendants suggest, however, this is too tenuous to establish pretext particularly when it is considered that it was Brown who gave plaintiff until the hearing on May 31, 1995 to cure his deficiency regarding the memorandum when she very well could have terminated him when he missed the May 30, 1995 deadline. By giving him an additional day, a lack of animus on her part is suggested.

[*22] B. Sex Discrimination

Insofar as plaintiff is more generally asserting that he was the subject of sexual discrimination in that he was treated differently because he was male, it is clear that that claim must fail. [HN12] Since there is no direct evidence which would support such a contention, to establish such this claim, plaintiff would have to "successfully navigate the course of shifting burdens authorized by *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)." *Mojica v. Gannett Co., Inc.*, 7 F.3d 552, 561 (7th Cir. 1993). Under the burden shifting approach, plaintiff must initially establish a prima facie case which includes a showing that (1) he was a member of a protected group; (2) he was doing his work well enough to meet defendant's legitimate expectation; (3) he was discharged despite his performance; and (4) defendant sought a replacement for him. *See, Sample v. Aldi, Inc.*, 61 F.3d 544, 548 (7th Cir. 1995); *Cherry v. American Tel. & Tel. Co.*, 47 F.3d 225, 228 (7th Cir.1995); *Pilditch v. Board of Education of Chicago*, 3 F.3d 1113, 1116 (7th Cir. 1993). [HN13] To

raise an inference of discrimination, the fundamental requirement [*23] is that a Title VII plaintiff must show that as a member of a protected class he was treated differently than similarly situated others outside the class. *Id.*; accord, *Chambers v. American Trans Air, Inc.*, 17 F.3d 998, 1003-4 (7th Cir. 1994).

If plaintiff is successful in establishing a *prima facie* case, a rebuttable presumption of discrimination is created and "the burden of production shifts to the defendant...to produce some legitimate nondiscriminatory reason for the challenged employment decision." *Kirk*, 22 F.3d 135, 138. "If the defendant produces the legitimate nondiscriminatory reason, the burden shifts back to the plaintiff to prove by a preponderance of the evidence that the reasons offered by the defendant were a pretext for discrimination." *Id.* "Of course, the ultimate burden of persuasion (not production) rests with the plaintiff at all times." *Id.*

Plaintiff has wholly failed to successfully navigate the shifting burdens under *McDonnell Douglas*. In the first place, he has not established a prima facie case because he failed to establish that he was performing his work up to his employer's expectations. As indicated previously, plaintiff repeatedly [*24] was asked to perform work which he did not do, he was repeatedly warned about his misconduct and he was repeatedly told that such misconduct could result in termination. Notwithstanding all of his chances plaintiff failed to do his work in a timely fashion (if at all) and hence failed to meet his employer's expectations.

Because plaintiff did not establish a prima facie case, his claim of sex discrimination must fail. Yet even if he had successfully cleared this initial hurdle, his claim must fail because defendant has adequately set forth a legitimate, nondiscriminatory reason for the adverse employment action--a reason which plaintiff has failed to demonstrate was pretextual. As already noted, insubordination is certainly a legitimate reason for discharge. Here the evidence is replete with instances of plaintiff's insubordination and plaintiff has failed to show that that was not the true reason for his discharge. Even more, plaintiff has failed to point to any *similarly situated* females who were treated differently such that some inference could be drawn from dissimilar treatment.

C. Retaliation

Plaintiff also claims that he was the subject of retaliation. In this [*25] vein he points to two instances where he allegedly complained of discriminatory treatment--the first being when his desk was allegedly broken into while he was on a thirty day suspension and the second being when his computer was allegedly taken home by Brown and all of his work erased. The first instance

occurred in December 1994 while the second occurred at some point prior to March 1992.

[HN14] Title VII prohibits retaliation for opposing practices which are discriminatory. It does so by making it "an unlawful employment practice for an employer to discriminate against any of his employees...because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under the subchapter." 42 U.S.C. § 2000e-3. To establish a *prima facie* case of retaliation, plaintiff must show (1) that he engaged in protected activity; (2) that an adverse employment action occurred; and (3) that there exists a causal link between the protected activity and the adverse employment action. *Roth v. Lutheran General Hospital*, 57 F.3d 1446, 1459 (7th Cir. 1995). [*26]

Plaintiff has failed to make that showing. Assuming for present purposes that his complaining about the entry into his desk and about the matters being deleted from his computer constituted protected activity, there is no showing of a causal link between that activity and his termination.

"[HN15] Generally, a plaintiff may establish [a causal connection] through evidence that the discharge took place on the heels of the protected activity." *Dey v. Colt Constr. & Dev. Co.*, 28 F.3d 1446, 1458 (7th Cir. 1994). "However, 'as the temporal distance between [the claimant's] protected expression and the adverse action increase[s], it is less likely that there is a causal link between the two events.'" *McClendon v. Indiana Sugars, Inc.*, 108 F.3d 789, 797 (7th Cir. 1997). The Seventh Circuit "has found the causal nexus sufficiently demonstrated when the time period between the filing of the complaint and the adverse action was one day or one week." *Id.* (footnotes omitted)(finding temporal link between filing of complaint and termination spanning 2-3 day period). Certainly the allegations in this case which relate to complaints five months and years before his termination fall way [*27] beyond the pale of that considered sufficient to support an inference of a causal link.

III. USEERA

Finally, plaintiff asserts that his termination was in violation of the Uniformed Services and Reemployment Rights Act (USERRA), 38 U.S.C. §§ 4301, *et. seq.* This is so, he asserts, because he was terminated just one day before he was to fulfill his military obligation for 1995.

"[HN16] USERRA forbids employment discrimination on the basis of membership in the armed forces, § 4311(a), and authorizes private suits for damages or injunctive relief against the employer...." *Velasquez v. Frapwell*, 160 F.3d 389, 390, 1998 U.S. App. LEXIS

28384 (7th Cir. 1998). An employer violates USERRA by denying an employment benefit where the employee's "membership...or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership...or obligation for service." 38 U.S.C. § 4311(c)(1).

It has been held that [HN17] the burden-shifting scheme applicable to cases under the National Labor Relations Act applies to USERRA claims. *See, e.g., Gummo v. Village of Depew*, [*28] 75 F.3d 98, 106 (2nd Cir. 1996), cert. denied, 517 U.S. 1190, 116 S. Ct. 1678, 134 L. Ed. 2d 780 (1996); *Smith v. Thomas Lighting*, 1998 U.S. Dist. LEXIS 12601, 1998 WL 527307, *2 (N.D. Miss. Aug. 5, 1998); *Chance v. Dallas County Hospital District*, 1998 U.S. Dist. LEXIS 5110, 1998 WL 1777963, *3 (N.D. Tex. Apr. 6, 1998). Under that scheme plaintiff must initially prove that his military status was a motivating factor in the defendant's adverse employment decision. Upon such a showing, "the burden then shifts to the defendant to prove that it would have made the same decision regardless of plaintiff's military status." *Chance* at *3.

Here, plaintiff has failed to show that his military status was a motivating factor in the defendant's adverse employment decision. "Military status is a motivating factor if the defendant relied on, took into account, considered or conditioned its decision on that consideration." *Id.*

By the time plaintiff was terminated he had compiled a long history of insubordination and failure to complete assignments. Most recently he was very long over due on his work in the Transportation Displays Incorporated audit, had oft-been warned about his dereliction in that regard, and had nonetheless failed [*29] to complete the project despite repeated requests and extensions. The only thing which would suggest some correlation between his military status and his termination was the temporal connection--he was terminated the day before he was to begin his military endeavors. But that totally ignores the fact that on every other occasion, over the span of several years, he was granted the time he sought so that he could fulfill his military duties, clearly negating any suggestion that defendant had an animus towards plaintiff's military status and his obligations relating thereto.

Even if the record supports the conclusion that plaintiff has established a *prima facie* case under USERRA, defendant has met its burden of showing that it would have made the same decision regardless of plaintiff's military status. While the standard here requires more than a simple articulation of a legitimate nondiscriminatory reason for its decision, "typically, the defendant sat-

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isfies this burden by presenting objective evidence as to its probable decision in the absence of any impermissible motivation." *Id.*

In the present matter, defendant has presented evidence that its probable decision would have been [*30] to terminate plaintiff's employment even without regard to his status as a reserve officer. Indeed, the record suggests that his termination was an all but foregone conclusion given his repeated insubordination. Plaintiff was continuously warned that his insubordination was unacceptable and that it could lead to termination. Those warnings continued as plaintiff repeatedly failed to submit the information requested on the Transit Display Incorporated audit. Clearly given his work history defen-

dant would have terminated plaintiff regardless of his military status.

Conclusion

On the basis of the foregoing, the motion for summary judgment filed by the defendant Chicago Transit Authority on October 2, 1998 is GRANTED. JUDGMENT shall be ENTERED IN FAVOR of defendant Chicago Transit Authority and AGAINST the plaintiff Antonio R. Daggett, Sr.

SO ORDERED this 18 day of November 1998.

William C. Lee, Visiting Judge

United States District Court

Exhibit K

1 of 1 DOCUMENT

HALLAM BYER, Plaintiff, vs. DTG OPERATIONS, INC., Defendant.**CASE NO. 07-80033-CIV****UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA****2007 U.S. Dist. LEXIS 68822****September 18, 2007, Decided
September 18, 2007, Entered**

CORE TERMS: sleeping, termination, pretext, retaliation, manager, bus, summary judgment, prima facie case, age discrimination, rental, retaliatory, supervisor, notice, fired, shuttle, proffered reason, non-discriminatory, causation, proffered, slouched, protected activity, causal relationship, temporal proximity, similarly situated, terminated, non-moving, deposition, comparator, interval, firing

COUNSEL: [*1] For Hallam Byer, Plaintiff: Robert Anthony Bogdan, LEAD ATTORNEY, Robert Anthony Bogdan, Pompano Beach, FL.

For DTG Operations, Inc., Defendant: John Edmund Phillips, Jr., LEAD ATTORNEY, Phelps Dunbar LLP, Tampa, FL; Jolee Land, LEAD ATTORNEY, Phelps Dunbar, Tampa, FL.

JUDGES: DONALD M. MIDDLEBROOKS, UNITED STATES DISTRICT JUDGE.

OPINION BY: DONALD M. MIDDLEBROOKS

OPINION

**ORDER GRANTING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

This Cause comes before the Court on Defendant's Motion for Summary Judgment (DE 8), filed July 9, 2007. The Court has reviewed the record and is fully advised in the premises.

I. Background

Plaintiff Hallam Byer ("Byer") filed the instant action alleging violations of the Age Discrimination Employment Act of 1967, 29 U.S.C. § 621 *et seq.* ("ADEA") and the Florida Civil Rights Act of 1992, *Fla. Stat.* § 760

et seq. ("FCRA"). Specifically, Byer alleges that his former employer, DTG Operations, Inc. ("DTG"), retaliated against him by terminating his employment on March 16, 2006 as a result of his filing an age discrimination claim with the Equal Employment Opportunity Commission ("EEOC") against DTG in 2004.¹ Byer's position is that, contrary to DTG's claim that it fired him for sleeping on the job [*2] twice, he was actually fired for filing the 2004 age discrimination claim and that any other reasons DTG offers for firing him are pretextual. Byer timely filed a charge of discrimination with the EEOC, again claiming age discrimination and retaliation. After receiving a right to sue letter, Byer filed the instant suit.

1 In his complaint, Byer also alleged discrimination on the basis of age discrimination, in addition to his retaliation claim; however, in its Motion for Summary Judgment, Defendant noted that Plaintiff's counsel agreed that any age discrimination claim is time-barred. Def.'s Mot. Summ. J. n.1. Additionally, the parties have since stipulated that Plaintiff has abandoned the count of age discrimination in the Complaint and the sole remaining issue to be litigated is Plaintiff's claim of retaliation.

II. Facts

DTG, a rental car company with its headquarters in Tulsa, Oklahoma, operates rental car facilities under both the Dollar Rent A Car ("Dollar") and Thrifty Car Rental ("Thrifty") brands. (Berroteran Aff. P 5.) DTG rents vehicles on a temporary basis to tourists, business travelers, and other individuals requiring the use of a vehicle. (Berroteran Aff. P 5.) DTG maintains [*3] a facility in West Palm Beach, Florida that consists of a rental counter and a maintenance facility. (Berroteran Aff. P 6.) Henrietta Berroteran was the Director of Field Employee Relations. (Berroteran Aff. P 2.) At all times relevant, the

management structure at DTG's West Palm Beach facility was as follows: General Manager Paul Kobis ("Kobis") supervised and managed operations and was ultimately responsible for the supervision of all West Palm Beach employees. (Kobis Aff. P 2.) Additionally, he was involved in or reviewed all hiring, termination, and disciplinary decisions. (Kobis Aff. P 2.) Todd Kushner ("Kushner"), Maintenance Manager, and Kristin Tennant ("Tennant"), Operations Manager, assisted Kobis in supervising West Palm Beach employees. (Berroteran Aff. P 6.) Kushner's predecessor was Ed Ryan ("Ryan"). (Kobis Aff. P 3.)

Effective January 3, 1995, DTG hired Byer as a part-time mechanic at its Fort Lauderdale facility. (Byer Dep. at 35.) At that time, Byer was fifty-three years old. (Byer Dep. at 11.) This position was eliminated in June 1995. (Berroteran Aff. Ex. 4.) In September 1995, DTG re-hired Byer as a full-time Auto Technician at its West Palm Beach facility. (Berroteran [*4] Aff. Ex. 5). In September 1996, Byer transferred to DTG's Fort Lauderdale facility, where he worked on DTG's fleet of rental cars as a Master Mechanic, and then on shuttle buses used to transport customers to and from the airport terminal and DTG's rental locations as a Bus Technician, until January 2004. (Berroteran Aff. P 9, Ex. 6.)

In 2003, Byer began experiencing some problems with his co-workers and supervisors at the Fort Lauderdale location. Specifically, Byer was upset because he felt other mechanics were blocking his access to the repair bays and harassing him. (Byer Dep. at 38-44.) Thus, Byer requested a transfer to the West Palm Beach facility. DTG transferred Byer back to the West Palm Beach location in January 2004. (Kobis Aff. PP 4, 5.) Shortly after this transfer, Kobis and Ryan asked Byer if he would be willing to work as a Bus Technician, because DTG had recently acquired several new buses and the location had no other mechanics with the requisite knowledge or experience to maintain the shuttle bus fleet. (Kobis Aff. P 5.)

In April 2004, Byer complained to Kobis that he was having problems with his supervisor, Ryan. Specifically, Byer felt Ryan was "short" with him, [*5] not treating him fairly, had used foul language on two occasions, including one occasion in which Ryan stated Byer was "too f-ing old." (Kobis Aff. P 7, Ex. 1.) Kobis promptly responded by coordinating a meeting with Byer and Ryan on April 28, 2004. (Kobis Aff. P 8.) Byer was unable to identify any witnesses to the alleged comments and Ryan denied making these comments. (Kobis Aff. P 8.) Kobis counseled Ryan regarding DTG's intolerance of unprofessional language and conduct, and counseled Ryan and Byer regarding their working relationship. (Kobis Aff. P 9.) Shortly after the meeting, Kobis instructed Ryan to reconfirm with Byer that he was inter-

ested in focusing on repairing DTG's buses. (Kobis Aff. P 9.) Byer confirmed he was interested, and Ryan began assigning all bus-related maintenance and repair jobs to Byer. (Kobis Aff. P 10, Ex. 1.)

In 2004, Byer filed a charge of age discrimination and retaliation with the EEOC. (Byer Aff. P 8.) DTG received notice that Byer filed the charge on June 2, 2004. (Berroteran Aff. P 10.) DTG Human Resources, Kobis, and Byer had a series of discussions throughout Fall 2004, during which Byer indicated the harassment had stopped and that he was happy [*6] with his job as a Bus Technician. (Berroteran Aff. P10.) In December 2004, Byer voluntarily withdrew his charge prior to the conclusion of the EEOC's investigation and prior to any findings by the EEOC. (Berroteran Aff. Ex. 9.)

Following the withdrawal of the 2004 charge of discrimination and until November 2005, Byer continued to work without incident. The conditions at work improved. (Byer Dep. at 55.)

On March 16, 2006, DTG terminated Byer's employment for sleeping on the job, in violation of company policy. (Byer Dep. at 57-58; Berroteran Aff. P 13.)

Byer filed a charge of discrimination with the EEOC shortly after his termination, in which he alleged that he was retaliated and discriminated against because of his the 2004 charge in which he alleged age discrimination. (Berroteran Aff. Ex. 16.) Following its investigation, the EEOC issued a "right to sue" letter and concluded that the information obtained did not appear to establish violations of the ADEA.

III. Summary Judgment Standard

Summary judgment is appropriate only when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. *See Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). [*7] The moving party bears the burden of meeting this exacting standard. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970). In applying this standard, the evidence, and all reasonable factual inferences drawn therefrom, must be viewed in the light most favorable to the non-moving party. *See Arrington v. Cobb County*, 139 F.3d 865, 871 (11th Cir. 1998); *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997). The non-moving party, however, bears the burden of coming forward with evidence of each essential element of their claims, such that a reasonable jury could find in their favor. *See Earley v. Champion Int'l Corp.*, 907 F.2d 1077, 1080 (11th Cir. 1990). The non-moving party "[m]ay not rest upon the mere allegations and denials of [its] pleadings, but [its] response . . . must set forth specific facts showing that there is a genuine issue for trial."

Fed. R. Civ. P. 56(e). "The mere existence of a scintilla of evidence in support of the [non-movant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-movant]." *Ander-son v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Further, conclusory, uncorroborated allegations [*8] by a plaintiff in an affidavit or deposition will not create an issue of fact for trial sufficient to defeat a well-supported summary judgment. *See Earley*, 907 F.2d at 1081. The failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial and requires the court to grant the motion for summary judgment. *See Celotex*, 477 U.S. at 322.

IV. Legal Analysis

A. Elements of an ADEA Retaliation Claim

For claims arising under the ADEA, the Eleventh Circuit has adopted the principles of law applicable to cases arising under the very similar provisions of Title VII, 42 U.S.C. § 2000e et seq. *Drago v. Jenne*, 453 F.3d 1301, 1307 (11th Cir. 2006); *Hairston v. Gainesville Sun Publ'g Co.*, 9 F.3d 913, 919 (11th Cir. 1993) (citing *Carter v. City of Miami*, 870 F.2d 578, 581 (11th Cir. 1989)). It is well established that courts evaluate ADEA cases using the same burden-shifting framework described in *McDonnell Douglas Corp. v. Green*. *Id.*; *see McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Furthermore, the same legal analysis also governs Byer's FCRA claim, as it has been uniformly held that federal case law regarding Title VII is applicable [*9] when construing FCRA claims. *Albra v. Advan, Inc.*, 490 F.3d 826, 834 (11th Cir. 2007); *Chanda v. Engelhard/ICC*, 234 F.3d 1219, 1221 (11th Cir. 2000); *Brand v. Florida Power Corp.*, 633 So.2d 504, 509 (Fla. 1st DCA 1994); *Florida Dep't of Community Affairs v. Bryant*, 586 So.2d 1205 (Fla. 1st DCA 1991). Accordingly, I turn to my analysis regarding Byer's retaliation and FCRA claims under this standard.

Under the *McDonnell Douglas* framework, a plaintiff claiming must first establish a prima facie case of retaliation. *McDonnell Douglas*, 411 U.S. at 802. Once a plaintiff establishes the prima facie case, there arises a presumption of discrimination. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981). The burden then shifts to the employer to state a legitimate, nondiscriminatory reason for the employment decision. *Id.* at 802-803. If the employer successfully does so, the burden shifts back to the plaintiff to show that the reason offered by the employer was pretextual. *Id.* at 804. The employer's burden to proffer a legitimate reason for the action has been described as one of production, not persuasion, and it can

involve no credibility assessment. *See Reeves v. Sander-son Plumbing Prods., Inc.*, 530 U.S. 133, 142, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000). [*10] It is the plaintiff who bears the ultimate burden of proving by a preponderance of the evidence that the reason provided by the employer is a pretext for prohibited, retaliatory conduct. *See Olmsted v. Taco Bell Corp.*, 141 F.3d 1457, 1460 (11th Cir. 1998).

To establish a prima facie case of retaliation, therefore, Byer must show that: (1) he engaged in statutorily protected expression; (2) he suffered an adverse employment action; and (3) there is some causal relation between the two events. *See Drago*, 453 F.3d at 1307. The Eleventh Circuit has noted that the causal link requirement under Title VII must be construed broadly; "a plaintiff merely has to prove that the protected activity and the negative employment action are not completely unrelated." *EEOC v. Reichhold Chems., Inc.*, 988 F.2d 1564, 1571-72 (11th Cir. 1993).

B. Plaintiff's Prima Facie Case

It is uncontested that Plaintiff has satisfied the first two requisite elements of a valid retaliation claim. Specifically, Byer's 2004 EEOC claim constitutes statutorily protected expression, and his 2006 termination constitutes an adverse employment action. It is then necessary to determine whether Byer has established the third element [*11] of his claim - whether there is a causal relationship between the 2004 filing and his 2006 termination. DTG disputes the third element of the prima facie case. DTG contends that Byer has failed to establish a causal relationship between his 2006 discharge and his 2004 filing.

In order to establish this causal relationship, Byer must prove that: 1) the decision-makers responsible for the adverse employment action were aware of the protected conduct, and 2) the adverse acts were at least somewhat related and in close temporal proximity to the protected activity. *Higdon v. Jackson*, 393 F.3d 1211 (11th Cir. 2004); *Murry v. Gonzales*, 2006 U.S. Dist. LEXIS 60935 at *33 (M.D. Fla. Aug. 28, 2006). "At a minimum, [a plaintiff] must show that the adverse act followed the protected conduct." *Hammons v. George C. Wallace State Cmty. College*, 174 Fed. Appx. 459, 464 (11th Cir. 2006) (quoting *Griffin v. GTE Fla., Inc.*, 182 F.3d 1279, 1284 (11th Cir. 1999)) "If there is a substantial delay between the protected expression and the adverse action in the absence of other evidence tending to show causation, the complaint of retaliation fails as a matter of law." *Higdon*, 393 F.3d at 1220.

Byer argues that [*12] the decision-makers involved - Berroteran, Kobis, Sturdivant, and Tennant - knew of his 2004 EEOC charge and were involved in his

2006 firing. The evidence establishes that Henrietta Berroteran, the Director of Field Employee Relations was involved in preparing DTG's response to Byer's 2004 EEOC charge and was involved in Byer's termination in 2006. She reviewed and approved the request from West Palm Beach to terminate Byer's employment for sleeping on the job (Berroteran Aff. P 3.) Kobis is ultimately responsible for the supervision of all West Palm Beach employees and either is involved in or reviews all hiring, termination, and disciplinary decisions.

According to DTG, on March 15, 2006, Fleet Manager Steve Sturdivant ("Sturdivant") observed Byer slouched over and apparently asleep in the back of a shuttle bus around 1:40 pm. (Berroteran Aff. P 12; Ex. 12.) Sturdivant called Kushner and Tennant to report his observation. Kushner arrived at the location approximately twenty minutes later and observed Byer still slouched over in the back of the bus. (Berroteran Aff. Ex. 12, 13.; Kushner Aff. P 6, Ex. 1.) Kushner then spoke with Art Owens ("Owens"), one of Byer's co-workers in the [*13] maintenance department, who stated that, sometime during their lunch break, which was from 12:30 pm until 1:00 pm, Byer left the break room and Owens saw him get on the shuttle bus and sit down in the backseat. (Kushner P 7, Ex. 2.) Later that day, Kushner and Tennant informed Byer that he was being suspended pending an investigation of his sleeping on the job. Tennant reminded Byer that sleeping on the job was a violation of company policy. (Berroteran Aff. Ex. 14, 15; Kushner Aff. P 8.) Kushner spoke with Kobis and recommended Byer's termination for violating company policy by sleeping on the job. (Kushner Aff. P 9.) Kobis agreed and forwarded the recommendation to DTG's corporate Human Resources department, which ultimately approved the termination. (Berroteran Aff. P 14.)

The evidence establishes that Kushner initiated Byer's termination proceedings. DTG did not employ Kushner until September 2005, after Byer's 2004 EEOC charge. Byer has provided no evidence indicating that Kushner was even aware of the 2004 charge; thus, he fails to establish that the individual responsible for commencing his termination proceedings had any knowledge of his 2004 charge, and so, I find that he has [*14] failed to establish a causal relationship between his 2006 termination and his 2004 EEOC charge.

However, I note that even if Byer established that all of the individuals responsible for his termination did have knowledge of his 2004 filing, his claim would still fail because he has not established that his termination was at least somewhat related and in close temporal proximity to the protected activity. *Higdon*, 393 F.3d at 1220. The record is uncontroverted and establishes that there is a nearly twenty-two month temporal span between Byer's 2004 charge and his 2006 termination. This

time frame exceeds those intervals of time that courts have found appropriate temporal proximity sufficient to establish causation. *See, e.g., Clark County School Dist. v. Breeden*, 532 U.S. 268, 273-74, 121 S. Ct. 1508, 149 L. Ed. 2d 509 (2001) (finding that a three-month interval was insufficient to establish causation); *Drago*, 453 F.3d at 1307-08 (finding that a three-month interval between adverse actions and protected act is too long to establish causation). It is clear that a time period of nearly two years is too far removed in time to establish that the "adverse act followed the protected conduct." *Griffin v. GTE Fla., Inc.*, 182 F.3d 1279, 1284 (11th Cir. 1999). [*15] Moreover, Byer has not established that the two incidents were at least somewhat related. Byer's protected activity took place in May 2004 and he was discharged in March 2006. He attempts to narrow the period of time between the 2004 and an adverse act by claiming that after the 2004 charge he was subjected to disparate treatment because he was subjected to closer monitoring and scrutiny than younger employees and than employees who had not complained to the EEOC about discrimination. (Compl. P 21.) Byer had included this claim in his 2006 charge. However, Byer fails to indicate what record evidence supports this allegation, and the Court is unaware of any such evidence.

Byer provides only one specific event he believed to be retaliatory which occurred prior to his termination. Specifically, he alleges that Ryan, his immediate supervisor, told him that on numerous occasions he, Ryan, was being pressured and asked by management Fort Lauderdale management to find reasons to write him up and fire him. (Byer Dep. at 55.) Ryan later denied making these statements, and the record is devoid of any evidence corroborating that Ryan made such statements. However, even if Byer could prove that [*16] Ryan did, in fact, make such statements, the fact remains that the record simply contains no evidence connecting the statements, which occurred from December 2004 to August 2005, to either 2004 charge or the 2006 termination. In fact, the record belies any such relationship. This time frame also exceeds those intervals of time that courts have found temporal proximity sufficient to establish causation. In his deposition, Byer stated that, after he filed his 2004 charge, the situation with DTG improved. (Byer Dep. at 55.) I find that Byer has not established a causal connection between his 2004 charge and his 2006 termination and, as such, he has failed to establish a *prima facie* case of retaliation.

C. Pretext

Even were it to be assumed that Plaintiff had established a *prima facie* case of retaliation, DTG has offered a non-discriminatory, legitimate reason for Byer's termination, that he was sleeping on the job. The burden

would shift to Byer to establish that such proffered reason is merely a pretext. I find that Byer has not met this burden.

It is well established that in order to avoid summary judgment a plaintiff must introduce significantly probative evidence showing that the asserted [*17] reason is merely a pretext for discrimination. If the proffered reason is one that might motivate a reasonable employer, a plaintiff cannot recast the reason but must meet it head on and rebut it. The plaintiff can show pretext through evidence that (1) a discriminatory reason more likely motivated the employer or (2) the employer's reasons are unworthy of credence. The plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could find them unworthy of credence. *Champ v. Calhoun County Emergency Mgmt. Agency*, 226 Fed. Appx. 908, 2007 U.S. App. LEXIS 7037, *12 (11th Cir. 2007).

In examining DTG's proffered non-discriminatory reason for the adverse employment action, I note that

A plaintiff is not allowed to recast an employer's proffered nondiscriminatory reasons or substitute his business judgment for that of the employer. Provided that the proffered reason is one that might motivate a reasonable employer, an employee must meet that reason head on and rebut it, and the employee cannot succeed by simply quarreling with the wisdom of that reason. Federal courts [*18] do not sit as a super-personnel department that reexamines an entity's business decisions.

Chapman v. AI Transp., 229 F.3d 1012, 1030 (11th Cir. 2000) (internal citations omitted).

With this in mind I turn to DTG's proffered non-discriminatory reason for Byer's 2006 termination. The record reflects that on November 17, 2005, Dispatcher Marie Harrison ("Harrison") and Lead Service Agent George Aleman ("Aleman") reported that they had observed Byer sleeping in a rental car. (Berroteran Aff. P 11; Ex. 10.) Aleman immediately told Kushner, Byer's supervisor at the time, and asked him to come see for himself; however, Byer had already exited the car when Kushner arrived. (Berroteran Aff. P 11; Ex. 10, 11.) Although the incident was written up, DTG decided not to discipline Byer at that time, because Kushner did not personally observe Byer sleeping in the car. (Berroteran Aff. P 11.)

On March 15, 2006, Fleet Manager Steve Sturdivant ("Sturdivant") observed Byer slouched over and apparently asleep in the back of a shuttle bus. (Berroteran Aff. P 12; Ex. 12.) Sturdivant called Kushner and Tennant to report this and Kushner arrived at the location approximately twenty minutes later and personally [*19] observed Byer slouched over in the back of the bus. (Berroteran Aff. Ex. 12, 13.; Kushner Aff. P 6, Ex. 1.) Kushner then spoke with Art Owens ("Owens"), one of Byer's co-workers in the maintenance department, who stated that, sometime during their lunch break, which was from 12:30 pm until 1:00 pm, Byer left the break room and Owens saw him get on the shuttle bus and sit down in the backseat. (Kushner P 7, Ex. 2.)

Later that day, Kushner and Tennant informed Byer that he was being suspended pending an investigation of his sleeping on the job. Byer was informed that sleeping on the job was a violation of company policy. (Berroteran Aff. Ex. 14, 15; Kushner Aff. P 8.) Both Kushner and Tennant state that Byer admitted he may have "dozed off" while on the bus that day. (Berroteran Aff. Ex. 14, 15.) Kushner spoke with Kobis and recommended Byer's termination for violating company policy by sleeping on the job. (Kushner Aff. P 9.) Kobis agreed and forwarded the recommendation to DTG's corporate Human Resources department, which ultimately approved the termination. (Berroteran Aff. P 14.)

DTG contends that this evidence, consisting of reports from multiple employees that Byer was sleeping on [*20] the job on two occasions, demonstrates that DTG believed in good faith that Byer was sleeping on the job, in violation of company policy, and, motivated by that belief, terminated his employment. There is sufficient evidence to support this assertion. Accordingly, I find that DTG has satisfied its burden of articulating a non-discriminatory reason for Byer's 2006 termination.

As outlined above, having found that DTG has satisfactorily articulated a legally sufficient non-discriminatory reason for Byer's 2006 termination, the burden shifts to Byer to establish, by a preponderance of the evidence, that DTG's proffered reason was in fact merely a pretext for prohibited, retaliatory conduct.

In support of his claim of pretext, Byer points the Court to his Statement of Material Facts in which he stated that he was not sleeping and that he was not slouched over for a twenty-minute period, as DTG stated. (Def. Statement of Material Facts PP 1, 2.) He contends that, in his deposition, he testified that he said nothing when confronted with the allegation he was sleeping on the job. (Byer Dep. at 70-73.) This contradicts record evidence by multiple DTG employees that Byer had stated that he may [*21] have "dozed off." Byer further contends that DTG, during the course of its

investigation, never asked him whether he had been sleeping, and that therefore a jury could choose to believe him and not DTG regarding the statements and so find that, because he disputes whether he admitted to sleeping, that DTG's managers are lying, and determine that DTG's proffered reason of Byer sleeping on the job was a pretext for retaliatory discharge. Byer further asserts that a jury could choose to believe that the "Corrective Action Notice" DTG issued to Byer informing him that he had been sleeping on the job on November 16, 2005. Byer alleges that he never received the "Corrective Action Notice" dated November 17, 2005, and so there is a dispute as to whether DTG fabricated the Notice, which would allow a jury to reasonably conclude that DTG's stated reason for firing Byer is "a sham."

However, it is well established that "the factual issue to be resolved is not the wisdom or accuracy of [an employer's] conclusion" that an employee's termination is justified. *Rojas v. Florida*, 285 F.3d 1339, 1342 (11th Cir. 2002). Thus, while Byer may quarrel with whether he was, in fact, sleeping, and whether he [*22] should have, but did not, receive the 2005 Corrective Action Notice, his dispute is legally insufficient to establish pretext. To establish pretext, Byer must address whether DTG's belief that he was sleeping on the job was a reasonable basis for DTG's action. Byer fails to address this issue. In essence, Byer's argument is that DTG fabricated all incidents relating to him sleeping on the job, that he never did sleep on the job and that a jury could infer he was terminated for a retaliatory reason.

Byer cites to *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000) to support his contention that he has established a genuine issue of material fact sufficient to go forward to a jury since a jury could choose to believe Byer, that DTG's proffered reason false. In *Reeves*, the plaintiff employee claimed he was fired because of age discrimination. *Reeves*, 530 U.S. at 138. The employer in *Reeves* submitted evidence indicating the employee had been fired for failure to maintain adequate attendance and time-keeping reports. *Id.* at 137. Plaintiff introduced evidence that he had accurately maintained the records and that his supervisor had demonstrated age-based animus toward the plaintiff. [*23] *Id.* at 138. The jury found in favor of the plaintiff, but the Fifth Circuit reversed. The Supreme Court granted *certiorari* and held that "a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." *Id.* at 148. In *Reeves*, the Court noted that the plaintiff introduced substantial evidence demonstrating that the employer's explanation was false, including evidence showing he had properly maintained attendance records and that er-

rors in monthly reports were not attributable to the plaintiff. *Id.* at 145.

As other Courts in this Circuit have noted, "*Reeves* does not stand for the proposition that any evidence of falsity, regarding the reason for termination, combined with a prima facie case is sufficient to withstand summary judgment." See, e.g., *Sonnier v. Computer Programs & Sys., Inc.*, 168 F. Supp. 2d 1322, 1331 (S.D. Ala. 2001). *Reeves* itself provided factors for courts to consider, such as the "strength of the plaintiff's prima facie case, the probative value of the proof that the employer's explanation is false, and any other evidence [*24] that supports the employer's case." *Reeves*, 530 U.S. at 149.

Here, unlike in *Reeves*, DTG has provided substantial evidence in the record from its employees and managers affirming that they had seen Byer sleeping on the job. DTG also provides testimony about the investigation and Corrective Notice. In opposition, Byer offers only his own conclusory statements that the investigation was a "sham" and that he was told "on numerous occasions" by his immediate supervisor, Ed Ryan, that Ryan was being pressured by Fort Lauderdale management to find reasons to "write [Byer] up and fire [him]." (Byer Dep. at 55.) Such conclusory statements are not supported by any other evidence. Byer did not submit any deposition or affidavit by Ed Ryan. Even if Ryan's statements could be proven, they fail to support Byer's claim that his termination was based on retaliation for filing the 2004 charge. He alleges that these comments occurred in late 2004 through August 2005, but Byer was not terminated until March 2006. There is no other evidence of any connection between Ryan's statements and the 2004 charge or his 2006 termination. At best, Ryan's alleged statement would show that DTG may have had "undisclosed [*25] motives for firing [Byer]." *Sonnier*, 168 F. Supp. 2d at 1332. Pretext is only proven if it is "shown both that DTG's reason was false, and that discrimination was the real reason behind the challenged action." *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 515, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993). To overcome summary judgment, Byer needs to demonstrate that these lies were a pretext for retaliation. This Byer has failed to do.

Byer next attempts to establish pretext by introducing his statement that, in January 2006, a DTG manager told Byer he had caught another employee sleeping on the job, but that that employee was not fired. (Byer Dep. at 65-66.)

A plaintiff may establish pretext by establishing that a similarly situated employee - a comparator - was treated differently. To demonstrate that another employee is similarly situated to the plaintiff, the Eleventh Circuit requires "that the quantity and quality of the

2007 U.S. Dist. LEXIS 68822, *

comparator's misconduct be nearly identical to prevent courts from second-guessing employer's reasonable decisions and confusing apples with oranges." *Maniccia v. Brown*, 171 F.3d 1364, 1368-69 (11th Cir. 1999). Byer must show that he and the comparator employee are similarly situated "in all relevant [*26] respects, including [] past performance and disciplinary history." *Bazemore v. Ga. Tech. Auth.*, No. 05-cv-1850, 2007 U.S. Dist. LEXIS 20780 (N.D. Ga. Mar. 23, 2007).

Here, Byer argues that a manager named Todd told him that another employee, Fritz, also at the West Palm Beach facility, had been sleeping on the job and was not fired. (Byer Dep. at 65-66.) Byer did not depose the manager and there is no other evidence supporting this assertion. The record is devoid of any evidence which would allow the Court to find that Fritz is a similarly situated employee. There is absolutely nothing in the record regarding: the position held; how many witnesses had seen Fritz sleeping; whether anyone besides Todd, the manager, had seen Fritz sleeping; whether there was

an inquiry into the incident; whether Fritz had been caught sleeping before; or whether Fritz is within the same protected class as Byer. Accordingly, I find that Byer has failed to establish pretext by use of a comparator.

V. Conclusion

For the reasons set forth above, I find that Byer's claim of retaliatory discrimination under the ADEA and FCRA fails as a matter of law and so, it is accordingly,

ORDERED AND ADJUDGED that Defendant's [*27] Motion for Summary Judgment (DE 8) is GRANTED.

DONE AND ORDERED in Chambers at West Palm Beach, FL, this 18th day of September, 2007.

DONALD M. MIDDLEBROOKS

UNITED STATES DISTRICT JUDGE

Exhibit L

1 of 1 DOCUMENT

**NICKIE CHRISTOPHER CHANCE, Plaintiff, VS. DALLAS COUNTY HOSPITAL
DISTRICT d/b/a PARKLAND MEMORIAL HOSPITAL, Defendant.**

NO. 3-96-CV-2842-BD(X)

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
TEXAS, DALLAS DIVISION**

1998 U.S. Dist. LEXIS 5110

**April 6, 1998, Decided
April 6, 1998, Filed**

DISPOSITION: [*1] Defendant's motion for judgment as a matter of law granted and plaintiff's motion for entry of judgment on the verdict denied.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant employer filed a motion to set aside the verdict awarded by a jury to plaintiff employee in his action under the Uniformed Services Employment and Re-employment Rights Act (USERRA), in which he alleged that his military obligation was a "motivating factor" in the employer's decision to fire him.

OVERVIEW: The employee was awarded a jury verdict in his action against the employer under USERRA in which he alleged that his military obligation was a "motivating factor" in the decision to fire him. The court granted the employer's motion to set aside the verdict finding that the evidence was not legally sufficient to support the employee's claim because the employer had legitimate concerns that the employee's leave of absence created a hardship where many of his co-workers had requested time off for Christmas, and nothing in the record linked these staffing considerations to adverse employment actions. The court agreed with the employer that a reasonable jury could not have inferred hostility from the employer's actions in calling the naval base to verify the legitimacy of employee's duty orders. The court concluded that any causal link that could have been inferred by the proximity in time between his return from military service and his termination was completely undermined by the intervening incident of his angry and abusive altercation with his supervisor upon his return, which warranted immediate termination under the employer's policy without regard to his military status.

OUTCOME: The employer's motion to set aside the employee's jury verdict in his USERRA action alleging termination based on his military obligation was granted.

CORE TERMS: military, termination, motivating, decision to terminate, threatening, purchasing, membership, co-worker, employment decision, supervisor, reservist, hostility, abusive, naval, matter of law, military obligation, motivation, notice, uniformed, proximity, fired, cold, phone, Re-employment Rights Act USERRA, prior to trial, reasonable jurors, reasonable inference, standing alone, re-employment, impermissible

LexisNexis(R) Headnotes

Civil Procedure > Trials > Judgment as Matter of Law > General Overview

[HN1] A party is entitled to judgment as a matter of law if there is no legally sufficient evidentiary basis to submit an issue to a jury. *Fed. R. Civ. P. 50(a)(1)*. A mere "scintilla" of evidence is insufficient. There must be a conflict in substantial evidence to create an issue of material fact. The motion should be granted only if the facts and inferences point so strongly and overwhelmingly in favor of the moving party that reasonable jurors could not have arrived at a contrary verdict. The entire record must be viewed in the light most favorable to the party opposing the motion.

***Labor & Employment Law > Discrimination > Title VII of the Civil Rights Act of 1964 > General Overview
Labor & Employment Law > Leaves of Absence > Military Leave***

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Military & Veterans Law > Veterans > Benefits > General Overview

[HN2] The Uniformed Services Employment and Re-employment Rights Act (USERRA) prohibits an employer from denying any benefit of employment to a member of the armed services on the basis of his military obligation. 38 U.S.C.S. § 4311. USERRA is meant to clarify, simplify, and where necessary, strengthen the existing veterans' employment and re-employment rights provisions of the former Veterans Re-employment Rights Act. The statute is to be liberally construed for the benefit of military reservists.

Labor & Employment Law > Discrimination > Title VII of the Civil Rights Act of 1964 > General Overview***Labor & Employment Law > Leaves of Absence > Military Leave******Military & Veterans Law > Veterans > Benefits > Employment***

[HN3] 38 U.S.C.S. § 4311(a) provides in part that a person who is a member of a uniform service shall not be denied retention in employment or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation. 38 U.S.C.S. § 4311(c)(1) provides that an employer shall be considered to have engaged in actions prohibited under subsection (a) of the Uniformed Services Employment and Re-employment Rights Act, if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service.

Labor & Employment Law > Discrimination > Disparate Treatment > General Overview***Labor & Employment Law > Leaves of Absence > Military Leave******Military & Veterans Law > Veterans > Benefits > Employment***

[HN4] The burden-shifting scheme applicable to cases under the National Labor Relations Act also applies to the Uniformed Services Employment and Re-employment Rights Act (USERRA) claims. Plaintiff initially must prove that his military status was a motivating factor in the defendant's adverse employment decision. 38 U.S.C.S. § 4311(c). Military status is a motivating factor if the defendant relied on, took into account, considered, or conditioned its decision on that consideration. The burden then shifts to the defendant to

prove that it would have made the same decision regardless of plaintiff's military status. This is an affirmative defense under USERRA. *Section 4311(c)*. In order to meet this burden, the defendant must do more than simply articulate a legitimate, nondiscriminatory reason for its decision. Proving that the same decision would have been justified is not the same as proving that the same decision would have been made. An employer may not prevail by offering a legitimate and sufficient reason for its decision if that reason did not motivate it at the time of the decision. The employer instead must show that its legitimate reason, standing alone, would have induced it to make the same decision. The defendant satisfies this burden by presenting objective evidence as to its probable decision in the absence of any impermissible motivation.

COUNSEL: For NICKIE CHRISTOPHER CHANCE, plaintiff: Russell Wilson, II, Attorney at Law, Law Office of Russell Wilson II, Dallas, TX USA.

For DALLAS COUNTY HOSPITAL DISTRICT, defendant: Marigny A Lanier, Attorney at Law, Maris & Lanier, Dallas, TX USA.

JUDGES: JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE.

OPINION BY: JEFF KAPLAN

OPINION**MEMORANDUM OPINION AND ORDER**

Plaintiff Nickie Christopher Chance obtained a \$ 6,627.78 verdict against Defendant Dallas County Hospital District d/b/a Parkland Memorial Hospital on his claim under the Uniformed Services Employment and Re-employment Rights Act ("USERRA"). Defendant has filed a renewed motion for judgment as a matter of law and plaintiff has filed a motion for entry of judgment on the verdict. For the reasons stated herein, defendant's motion is granted and plaintiff's motion is denied.

I.

Plaintiff worked as a procurement assistant in the purchasing department at Parkland Memorial Hospital. In December 1995, plaintiff volunteered for active reserve duty in the United States Navy. His reserve unit had been asked to [*2] fill positions occupied by civilian personnel because of a deadlock in Congress over the national budget. On December 11, 1995, plaintiff gave oral and written notice of his intent to take military leave effective December 13, 1995. Jack Parker, director of the purchasing department, acknowledged that this created a

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hardship on the other employees. The department was already understaffed due to the Christmas holidays and plaintiff's duties would need to be redistributed among a reduced number of co-workers. Parker held a meeting with Cassandra Miller, Walt Majkut and Mariah Scott to discuss this situation. ¹ He also asked plaintiff how often he might be called for military reserve duty on short notice.

1 Plaintiff, Walt Majkut and Mariah Scott worked as part of a three-member "team." Cassandra Miller was the department manager and their immediate supervisor.

Plaintiff did not provide Parker with a copy of his active duty orders when he first gave notice of his intent to take military leave. Parker directed [*3] Majkut to call the Naval Air Station to determine whether any such orders had been issued. Plaintiff eventually obtained a copy of his orders and delivered them to his employer on December 14, 1995. Majkut questioned the validity of the orders because they were printed on plain, white paper rather than on official letterhead. He telephoned the naval base a second time to inquire into the matter. Officer Joseph Black received this call and testified that the caller seemed suspicious that the orders had been falsified. Black confirmed the validity of the orders.

Plaintiff became upset when he learned about these phone calls and wrote a memo to Jack Parker on December 18, 1995. He complained that the repeated inquiries about his military status constituted harassment. Plaintiff admitted that he gave Parker the telephone number for the naval base so he could call with any questions. However, he believed that Parker had no right to delegate this task to Majkut. The hospital investigated the complaint and determined that the phone calls were appropriate.

Plaintiff remained on military leave until January 4, 1996. When he returned to work, he felt that Parker, Miller, Majkut and Scott were [*4] "cold" towards him. Their working relationship continued to deteriorate over the next few days. On January 8, 1996, plaintiff criticized Scott in a memo for sending a confirmation to a purchase order that had not been placed. Later that same day, plaintiff overheard Scott discussing the memo with another employee, Takisha Thompson. An argument ensued and plaintiff raised his voice. He refused to leave Scott's cubicle area and shouted, "You put me out." Scott and Thompson testified that plaintiff was screaming and clenching his fists. Both said that they feared plaintiff might hit them.

Miller intervened after the confrontation escalated. She ordered plaintiff and Scott into her office. Miller testified that plaintiff continued to scream at Scott. She felt he was "out of control" and trying to pick a fight.

Plaintiff verbally taunted Scott as she left the office, saying "Go on, get, get, get." He also used gestures and body language that Miller interpreted as "street stuff." Plaintiff admitted raising his voice to Scott in the cubicle area. However, he said that the argument was merely a "communication problem."

Miller investigated the incident and took statements from Majkut, Scott [*5] and Thompson. She found that plaintiff had yelled at Scott in a loud voice and rude manner and that his tone was abusive and threatening. This behavior warranted immediate termination pursuant to hospital policy. ² Miller discussed her findings with Parker and the vice president of the purchasing department who concurred that dismissal was warranted. Plaintiff was fired on January 12, 1996.

2 PMH Policy No. 6000-700 contemplates immediate termination for "threatening, intimidating, coercing or interfering with other employees" or "directing abusive/threatening or other acts of disrespect toward a . . . employee." (Dx. 17).

Plaintiff subsequently sued the hospital under a variety of legal theories for discrimination, harassment, retaliation and civil rights violations. All of his claims were dismissed prior to trial except for his claim under USERRA. ³ The case was tried to a jury on December 8-11, 1997. The jury found that: (1) plaintiff's military reserve status was a motivating factor in the defendant's [*6] decision to terminate him from employment; and (2) defendant would not have reached the same decision without regard to his military status. Plaintiff was awarded actual damages in the amount of \$ 6,627.78. Defendant has renewed its motion for judgment as a matter on the ground that there is no evidence to support these findings. Plaintiff seeks entry of a judgment on the verdict. The issues have been fully briefed by the parties and these motions are ripe for determination.

3 The Court granted summary judgment in favor of defendant on the claims for: (1) race discrimination and retaliation under Title VII of the Civil Rights Act and the Texas Commission on Human Rights Act; (2) violations of the Texas Whistleblower Act; and (3) violations of his constitutional rights to due process and free speech under 42 U.S.C. § 1983. See ORDER, 11/7/97. Plaintiff voluntarily dismissed his claim under the Equal Pay Act prior to trial.

II.

[HN1] A party is entitled to judgment as a matter of law if "there is no legally sufficient [*7] evidentiary basis" to submit an issue to a jury. *FED. R. CIV. P.*

50(a)(1); *Conkling v. Turner*, 18 F.3d 1285, 1300 (5th Cir. 1994). A mere "scintilla" of evidence is insufficient. There must be a conflict in substantial evidence to create an issue of material fact. *Rhodes v. Guiberson Oil Tools, Inc.*, 75 F.3d 989, 993 (5th Cir. 1996), citing *Boeing Co. v. Shipman*, 411 F.2d 365, 374 (5th Cir. 1969). The motion should be granted only "if the facts and inferences point so strongly and overwhelmingly in favor of the moving party . . . that reasonable jurors could not have arrived at a contrary verdict." *Crist v. Dickson Welding, Inc.*, 957 F.2d 1281, 1285 (5th Cir.), cert. denied, 506 U.S. 864, 113 S. Ct. 187, 121 L. Ed. 2d 132 (1992); *Boeing*, 411 F.2d at 374. The entire record must be viewed in the light most favorable to the party opposing the motion. *Resolution Trust Corp. v. Cramer*, 6 F.3d 1102, 1109 (5th Cir. 1993); *Barnett v. IRS*, 988 F.2d 1449, 1453 (5th Cir.), cert. denied, 510 U.S. 990, 114 S. Ct. 546, 126 L. Ed. 2d 448 (1993).

III.

[HN2] The Uniformed Services Employment and Re-employment Rights Act ("USERRA") prohibits an employer from denying any [*8] benefit of employment to a member of the armed services on the basis of his military obligation. 38 U.S.C. § 4311. ⁴ USERRA was enacted to "clarify, simplify, and where necessary, strengthen the existing veterans' employment and re-employment rights provisions" of the former Veterans Re-employment Rights Act. *Gummo v. Village of Depew, New York*, 75 F.3d 98, 105 (2d Cir.), cert. denied, 517 U.S. 1190, 116 S. Ct. 1678, 134 L. Ed. 2d 780 (1996), quoting from H.R.Rep. No. 65, 103d Cong., 2d Sess. 19 (1994), reprinted in 1994 U.S.C.C.A.N. 2449, 2451. The statute is to be liberally construed for the benefit of military reservists. *Coffy v. Republic Steel Corp.*, 447 U.S. 191, 196, 100 S. Ct. 2100, 2104, 65 L. Ed. 2d 53 (1980); *Cole v. Swint*, 961 F.2d 58, 59 (5th Cir. 1992).

4 [HN3] Subsection (a) of the statute provides, in relevant part:

A person who is a member of . . . a uniform service shall not be denied . . . retention in employment or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

Subsection (c) provides:

An employer shall be considered to have engaged in actions prohibited under subsection (a) [of USERRA], if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service.

38 U.S.C. § 4311(a) & (c)(1).

[*9] [HN4] The burden-shifting scheme applicable to cases under the National Labor Relations Act also applies to USERRA claims. *Gummo*, 75 F.3d at 106, citing *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 401, 103 S. Ct. 2469, 2474, 76 L. Ed. 2d 667 (1983); see also *Robinson v. Morris Moore Chevrolet-Buick, Inc.*, 974 F. Supp. 571, 575 (E.D.Tex. 1997). Plaintiff initially must prove that his military status was a motivating factor in the defendant's adverse employment decision. 38 U.S.C. § 4311(c); *Gummo*, 75 F.3d at 106; *Robinson*, 974 F. Supp. at 575. Military status is a motivating factor if the defendant relied on, took into account, considered, or conditioned its decision on that consideration. *Robinson*, 974 F. Supp. at 576, citing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 241-42, 109 S. Ct. 1775, 1786, 104 L. Ed. 2d 268 (1989).

The burden then shifts to the defendant to prove that it would have made the same decision regardless of plaintiff's military status. This is an affirmative defense under USERRA. 38 U.S.C. § 4311(c); *Gummo*, 75 F.3d at 106; *Robinson*, 974 F. Supp. at 576. In order to meet this burden, the defendant must do more than simply [*10] articulate a legitimate, nondiscriminatory reason for its decision:

Proving that the same decision would have been justified . . . is not the same as proving that the same decision would have been made. An employer may not . . . prevail . . . by offering a legitimate and sufficient reason for its decision if that reason did not motivate it at the time of the decision. . . . The employer instead must show that its legitimate reason,

standing alone, would have induced it to make the same decision.

Price Waterhouse, 109 S. Ct. at 1791-92 (internal quotation marks and citations omitted). See also *Robinson*, 974 F. Supp. at 576 (applying burden of proof developed in *Price Waterhouse* for Title VII "mixed motives" cases to claim under USERRA). Typically, the defendant satisfies this burden by presenting objective evidence as to its probable decision in the absence of any impermissible motivation. *Price Waterhouse*, 109 S. Ct. at 1791; *Burrell v. Board of Trustees of Georgia Military College*, 125 F.3d 1390, 1395 (11th Cir. 1997); *Foster v. University of Arkansas*, 938 F.2d 111, 114 (8th Cir. 1991).

IV.

Defendant challenges the jury verdict on two grounds: [*11] (1) plaintiff failed to prove that his military obligation was a motivating factor in the decision to terminate his employment; and (2) defendant established as a matter of law that it would have reached the same decision without regard to plaintiff's military status. The Court will address each argument in turn.

A.

The first issue is whether there is legally sufficient evidence that plaintiff's military obligation was a "motivating factor" in the defendant's decision to fire him. Plaintiff argues that evidence of hostility toward his military leave and the proximity in time between his leave and termination show impermissible motivation. Defendant disagrees and submits that the only reasonable inference to be drawn from the evidence is that the hospital was legitimately concerned about the needs of the purchasing department while plaintiff was on leave.

Jack Parker and Cassandra Miller admitted that they were concerned about the hardship created as a result of plaintiff's military leave. It was the Christmas season and many employees had already requested time off for the holidays. Plaintiff's workload would have to be redistributed among a reduced number of co-workers. Parker [*12] held a meeting with Miller, Walt Majkut and Mariah Scott to discuss how this work should be handled. He also asked plaintiff how often he might be called for reserve duty on short notice.

The Court finds that no reasonable juror could have construed this evidence as indicating hostility toward plaintiff's military status. It does not even remotely approach the type of conduct found to support such an inference in *Gummo*. In that case, the supervisor believed that military reservists abused their rights under USERRA. He also felt that reservists should not be entitled to full pay while on military leave and had written to

a local official seeking legislation to prevent such "double dipping." Finally, the supervisor was openly hostile to a Department of Labor investigation into another reservist's complaint of USERRA violations. *Gummo*, 75 F.3d at 103. By contrast, the evidence in the instant case shows nothing more than a valid concern about how to handle an increased workload while plaintiff was out on military leave. Even plaintiff admitted that this concern was legitimate.

Moreover, nothing in the record ties these staffing considerations to an adverse employment decision. [*13] Although plaintiff testified that his supervisor and co-workers were "cold" towards him, such vague and unsubstantiated characterizations are not sufficient to establish a USERRA violation.⁵ See *Swanson v. General Services Administration*, 110 F.3d 1180, 1186-89 (5th Cir.), cert. denied, 139 L. Ed. 2d 284, 118 S. Ct. 366 (1997). The only evidence that came close to establishing the requisite degree of hostility was Majkut's testimony that he was "resentful" of plaintiff for taking military leave. However, Majkut was not involved in the decision to terminate plaintiff. His feelings on this issue are irrelevant do not constitute evidence of improper motivation.

5 Mariah Scott testified that she was on vacation until January 8, 1996--four days after plaintiff returned from military leave. This testimony was uncontroverted. It is difficult to envision how Scott could be "cold" to plaintiff if she was not even in the office.

Plaintiff also points out that Majkut called the Naval Air Station twice to verify [*14] the legitimacy of his duty orders. The first call was made before plaintiff provided the hospital with a copy of his orders. Plaintiff testified that he gave Parker the phone number so he could call the naval base if he had any questions. Parker asked Majkut to determine whether any such orders had been issued. The Court finds that no reasonable jury could legitimately infer hostility under these circumstances. On the other hand, Majkut called the base again after plaintiff provided a copy of his orders. This could be viewed as evidence of hostility. However, Majkut made that call of his own volition. As previously noted, Majkut was not involved in the decision to terminate plaintiff and his unilateral actions do not constitute evidence of a USERRA violation.

Plaintiff is left to rely on the proximity in time between his military leave and his termination. This can be evidence of improper motivation. *Robinson*, 974 F. Supp. at 576-77, citing *Armstrong v. City of Dallas*, 997 F.2d 62, 67 (5th Cir. 1993). However, the circumstances presented in this case do not support such a conclusion. *Rhodes*, 75 F.3d at 993. As discussed more fully below,

plaintiff was involved in an angry [*15] and abusive altercation with Scott soon after his return from military leave. This altercation was independently sufficient to warrant his termination. Whatever causal link could otherwise be inferred by the proximity in time between these two events was completely undermined by this intervening incident. *Cf. Robinson, 974 F. Supp. at 578* ("synergistic effect" of plaintiff's violations of workplace rules insufficient to overcome suspicious timing of termination).

B.

The evidence also conclusively establishes that defendant would have fired plaintiff without regard to his military status. Plaintiff was involved in a heated and unprofessional exchange with Mariah Scott. Co-workers found his behavior threatening and embarrassing. Cassandra Miller had previously made clear that such conduct would not be tolerated in the purchasing department. This conduct warranted immediate termination under hospital policy. Such policies are objective evidence that defendant would have made the same employment decision even if plaintiff had not been a reservist. *See Foster, 938 F.2d at 114.*

Plaintiff disputes the particulars of this incident and attempts to minimize its significance. However, [*16] these distinctions are irrelevant. The employment discrimination laws do not protect employees from mistaken, ill-advised, unfair, or even arbitrary decisions. *Mayberry v. Vought Aircraft Co., 55 F.3d 1086, 1091 (5th Cir. 1995); Bienkowski v. American Airlines, Inc., 851 F.2d 1503, 1507-08 (5th Cir. 1988).* Like its counterparts, USERRA "was not intended to be a vehicle for judicial second-guessing of employment decisions, nor was it intended to transform the courts into personnel managers." *Bienkowski, 851 F.2d at 1507-08.* The only relevant question is whether Miller and Parker honestly believed that plaintiff's behavior warranted his termination. *Mayberry, 55 F.3d at 1091; Little v. Republic Refining Co., 924 F.2d 93, 97 (5th Cir. 1991).* Miller's firsthand observations and statements she received from other witnesses supported her conclusion that plaintiff was threatening and abusive toward Scott. Nothing in USERRA compels an employer to tolerate this type of misconduct in the workplace. *See Mararri v. WCI Steel, Inc., 130 F.3d 1180, 1183 (6th Cir. 1997); Smith v. Texas Department of Water Resources, 818 F.2d 363, 366 (5th Cir. 1987), cert. denied, [*17] 484 U.S. 1059, 108 S. Ct. 1012, 98 L. Ed. 2d 977 (1988).*

Plaintiff argues that two other employees engaged in similar conduct but were not terminated. Linda Germany, his former girlfriend, was not fired after she stabbed plaintiff in the office during business hours. Carla Norman cursed at a co-worker but was able to keep her job. Significantly, neither Parker nor Miller were involved in making these decisions. *See, e.g. Long v. Eastfield College, 88 F.3d 300, 307 (5th Cir. 1996)* (liability in employment discrimination case is predicated on wrongful intent of supervisory employees). Germany was not even employed in the purchasing department. The incident involving Norman occurred under prior management when hospital policies were not strictly enforced.

Moreover, the circumstances surrounding these other incidents are not substantially similar to those presented in the instant case. The confrontation between plaintiff and Linda Germany was essentially a lover's quarrel that got out of hand. Plaintiff refused to press charges against his former girlfriend. Carla Norman directed vulgar language at Artis Jackson. However, there is no evidence that Jackson felt threatened by this [*18] behavior. By contrast, Mariah Scott testified that she was afraid of plaintiff and had "never been more scared in my life." Plaintiff blocked the entrance to her work area and refused to leave. He continued to scream at her even after a supervisor intervened. This hardly equates to cursing at a co-worker.

The Court finds that the only reasonable inference to be drawn from the evidence is that the decision to terminate plaintiff was actually motivated by his threatening and abusive behavior toward Mariah Scott. That reason, standing alone, would have induced the defendant to make the same employment decision without regard to plaintiff's military status. *Price Waterhouse, 109 S. Ct. at 1791-92.*

Plaintiff has failed to prove that his military obligation was a motivating factor in the decision to terminate his employment. Moreover, defendant has established as a matter of law that it would have reached the same decision without regard to plaintiff's military status. The jury verdict must be set aside. The Court will enter a take-nothing judgment in favor of defendant.

SO ORDERED.

DATED: April 6, 1998.

JEFF KAPLAN

UNITED STATES MAGISTRATE JUDGE

Exhibit M

1 of 1 DOCUMENT

**JERRY LEON DEES, JR., Plaintiff, v. HYUNDAI MOTOR MANUFACTURING
ALABAMA, LLC, and HYUNDAI MOTOR AMERICA, INC., Defendants.**

CIVIL ACTION NO. 2:07cv306-MHT (WO)

**UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALA-
BAMA, NORTHERN DIVISION**

2007 U.S. Dist. LEXIS 87875

**November 30, 2007, Decided
November 30, 2007, Filed**

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff former employee sued defendants, his former employer (car maker) and car wholesaler, for allegedly discharging him in violation of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C.S. §§ 4301-4334. The employee objected to a magistrate judge limiting a discovery order to compel defendants to produce additional information concerning other alleged violations of employees' civil rights.

OVERVIEW: The magistrate judge granted the order only to the extent the employee requested documents and other information relating to any car maker's employee in the military who submitted a complaint to members of the car maker's management, the Equal Employment Opportunity Commission, or a court regarding treatment at the car maker that violated the complainant's civil rights. At the heart of the discovery issue was whether evidence of other civil rights complaints were properly relevant to the employee's USERRA claim. The cases cited by the employee for more expansive discovery did not show the requisite relevance between discrimination claims brought under Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C.S. §§ 1981a and 2000e through 2000e-17, and those under USERRA. The employee had not shown that the magistrate judge was clearly erroneous in his conclusion that the information he sought was not relevant to the claim or defense of any party in the case. Nowhere in the record did he make a specific showing to the magistrate judge of circumstances in the case where the comparison between USERRA and Title VII discrimination claims might bear relevance.

OUTCOME: The former employee's objection to the magistrate judge's order was overruled.

CORE TERMS: discovery, civil rights, armed services, relevance, uniformed, discovery order, broad discretion, legislative purpose, categorically, discoverable, admissible, religion, civilian, abused, hire, sex, discrimination claims

LexisNexis(R) Headnotes

Civil Procedure > Judicial Officers > Judges > Discretion

Civil Procedure > Judicial Officers > Magistrates > General Overview

Civil Procedure > Discovery > Relevance

[HN1] *Fed. R. Civ. P. 26(b)(1)* permits discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. That phrasing of the rule was adopted in 2000 to limit the scope of discovery to, in general, the actual claims and defenses involved in the action. *Fed. R. Civ. P. 26(b)(1)* advisory committee's note. Because whether a matter is relevant for discovery purposes is ultimately a fact-specific inquiry defying efforts to define it precisely, it follows that a magistrate judge or a district court judge hearing a discovery dispute must have a broad range of discretion to determine relevance.

Civil Procedure > Judicial Officers > Magistrates > Pretrial Orders

Civil Procedure > Discovery > General Overview

[HN2] A district court reviewing a magistrate judge's discovery order is, in general, limited by statute and rule to reversing that order only if it is clearly erroneous or contrary to law. 28 U.S.C.S. § 636(b)(1)(A) and Fed. R. Civ. P. 72(a). To put it another way, in the absence of a legal error, a district court may reverse only if there is an abuse of discretion by the magistrate judge.

***Labor & Employment Law > Discrimination > Title VII of the Civil Rights Act of 1964 > General Overview
Labor & Employment Law > Leaves of Absence > Military Leave***

[HN3] While both the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C.S. §§ 4301-4334, and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.S. §§ 1981a and 2000e through 2000e-17, are similar in that they generally seek to prevent workplace discrimination, they are also materially dissimilar.

***Labor & Employment Law > Discrimination > Title VII of the Civil Rights Act of 1964 > General Overview
Labor & Employment Law > Leaves of Absence > Military Leave***

[HN4] The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C.S. §§ 4301-4334, and Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C.S. §§ 1981a and 2000e through 2000e-17, are, in a broad sense, animated by fundamentally different goals. Congress enacted Title VII to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group. USERRA, on the other hand, states that its goals include encouraging noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service and minimizing the disruption to the lives of persons performing service in the uniformed services as well as to their employers. 38 U.S.C.S. § 4301(a).

Labor & Employment Law > Leaves of Absence > Military Leave

[HN5] Congress did not enact the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C.S. §§ 4301-4334, primarily to combat an ignorant or vicious stereotyping of members of the armed services as undependable employees, but intended only to encourage people to join the armed services. USERRA's primary focus is thus not on negative opinions of certain groups but on the reality that employers may not wish to hire employees who, as members of

the armed services, could frequently be absent for long periods of time.

***Civil Procedure > Discovery > Relevance
Labor & Employment Law > Discrimination > Title VII of the Civil Rights Act of 1964 > General Overview
Labor & Employment Law > Leaves of Absence > Military Leave***

[HN6] Because of the differing legislative purposes, evidence in a Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C.S. §§ 4301-4334, case of past discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C.S. §§ 1981a and 2000e through 2000e-17, may not have the probative value it might have in a Title VII case, where an employer's past discriminatory policy and practice may well illustrate that the employer's asserted reasons for disparate treatment are a pretext for intentional discrimination. There is no reason, however, to believe that unlawful discrimination against employees on the basis of race, sex, or religion necessarily correlates with discrimination on the basis of being a member of the armed services. The latter group is, for the most part, protected not as an effort to overcome the effects of historical discrimination but to ensure that citizens will not refrain from joining the armed services for fear of losing their civilian jobs.

Civil Procedure > Judicial Officers > Magistrates > Pretrial Orders

***Civil Procedure > Discovery > Relevance
Labor & Employment Law > Discrimination > Title VII of the Civil Rights Act of 1964 > General Overview
Labor & Employment Law > Leaves of Absence > Military Leave***

[HN7] The United States District Court for the Middle District of Alabama, Northern Division, cannot categorically, that is, as a matter of law, hold that evidence of all forms of discrimination by an employer under Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C.S. §§ 1981a and 2000e through 2000e-17, is always relevant and discoverable in a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C.S. §§ 4301-4334, claim against that employer. However, the court also cannot categorically hold that evidence of forms Title VII discrimination by an employer is never relevant and discoverable in an USERRA claim against that employer. For, there may circumstances where the comparison between USERRA and Title VII discrimination claims might bear relevance. The relevance issue must instead be decided on a case-by-case basis, and the question for a court reviewing a magistrate judge's order on the issue is

whether the magistrate judge was clearly erroneous, that is, abused his discretion.

**Governments > Legislation > Interpretation
Labor & Employment Law > Leaves of Absence > Military Leave**

[HN8] The Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C.S. §§ 4301-4334, should be liberally construed for the benefit of those who left private life to serve their country.

COUNSEL: [*1] For Jerry Leon Dees, Jr., Plaintiff: David Allen McDonald, LEAD ATTORNEY, Jeffrey Rayborn Sport, LEAD ATTORNEY, Vincent F. Kilborn, III, LEAD ATTORNEY, Kilborn Roebuck & McDonald, Mobile, AL; W. Perry Hall, Kilborn Roebuck & McDonald, Mobile, AL.

For Hyundai Motor Manufacturing Alabama, LLC, Defendant: Joseph Trent Scofield, LEAD ATTORNEY, Matthew Kinard Johnson, LEAD ATTORNEY, Thomas Scott Kelly, LEAD ATTORNEY, Ogletree, Deakins, Nash, Smoak & Stewart, Birmingham, AL.

For Hyundai Motor America, Inc., Defendant: Joseph Trent Scofield, LEAD ATTORNEY, Matthew Kinard Johnson, LEAD ATTORNEY, Thomas Scott Kelly, LEAD ATTORNEY, Ogletree, Deakins, Nash, Smoak & Stewart, Birmingham, AL.

JUDGES: Myron H. Thompson, UNITED STATES DISTRICT JUDGE.

OPINION BY: Myron H. Thompson

OPINION

OPINION AND ORDER

Plaintiff Jerry Leon Dees, Jr., brings this suit against defendants Hyundai Motor Manufacturing Alabama, LLC (HMMA) and Hyundai Motor America, Inc. (HMA), for allegedly discharging him in violation of the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4334 (USERRA). During discovery, Dees requested that the court issue an order to compel HMMA and HMA to produce additional information concerning [*2] other alleged violations of employees' civil rights. The United States Magistrate Judge granted the order only "To the extent the plaintiff requests documents and other information relating to any HMMA employee in the military who submitted a complaint to members of HMMA management, the EEOC, or a court regarding treatment at HMMA that violated the complainant's civil rights." Order (Doc. No. 38), at 2.

This case is now before the court on Dees's objection to the magistrate judge's order.

I. APPLICABLE STANDARDS

[HN1] *Fed. R. Civ. P. 26(b)(1)* permits discovery "regarding any matter, not privileged, that is relevant to the claim or defense of any party. ... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." This phrasing of the rule was adopted in 2000 to limit the scope of discovery to, in general, "the actual claims and defenses involved in the action." *Fed. R. Civ. P. 26(b)(1)* committee note. Because "[w]hether a matter is 'relevant' for discovery purposes is ultimately a fact-specific inquiry defying efforts to define it precisely," 6 James Wm. Moore, et al., *Moore's Federal Practice* § 26.41 [7][a] [*3] (3d ed.), at 26-121, it follows that the magistrate judge hearing a discovery dispute "must have a broad range of discretion to determine relevance." *Id.*; see *Williams v. City of Dothan*, 745 F.2d 1406, 1415 (11th Cir. 1984) (a judge has "broad discretion in shaping the scope of discovery under *Fed. R. Civ. P. 26(b)*").

[HN2] A district court reviewing a magistrate judge's discovery order is, in general, limited by statute and rule to reversing that order only if it is "clearly erroneous or contrary to law," 28 U.S.C. § 636(b)(1)(A); *Fed. R. Civ. P. 72(a)*--or, to put it another way in the absence of a legal error, only if there was an "abuse of discretion" by the magistrate judge. *Cf. Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 401, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990) ("When an appellate court reviews a district court's factual findings, the abuse-of-discretion and clearly erroneous standards are indistinguishable: A court of appeals would be justified in concluding that a district court had abused its discretion in making a factual finding only if the finding were clearly erroneous.").

II. DISCUSSION

In his motion to compel, Dees requested (1) documents relating to any other allegations that HMMA or HMA violated employees' [*4] civil rights in the State of Alabama; (2) identification of all employees who had complained regarding violations of their civil rights; and (3), for all such employees, personnel files and a statement explaining why they are no longer employed. HMMA and HMA assert that they have already fully responded with discovery by providing all documents concerning other USERRA complaints. The remaining requests, they argue, are overly broad and irrelevant, since other civil rights complaints--such as discrimination on the basis of sex, national origin, and religion--have no relation to Dees's USERRA claim. At the heart of this discovery issue is whether evidence of other civil

rights complaints are properly relevant to Dees's USERRA claim.

Dees cites a variety of cases where courts considering a discrimination lawsuit have permitted discovery concerning other types of discrimination. *See, e.g., Feingold v. New York*, 366 F.3d 138, 151-52 (2d Cir. 2004) ("[A]llegations of racial animosity can ... be considered by a trier-of-fact when evaluating [a] religion-based claim."); *Hafford v. Seidner*, 183 F.3d 506, 515 (6th Cir. 1999) (evidence of religious harassment could support racially hostile work-environment [*5] claim). These cases, however, show only that evidence regarding one type of claim under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 1981a, 2000e through 2000e-17, may be relevant in another Title VII claim; they do not show the requisite relevance between discrimination cases under Title VII and those under USERRA. [HN3] While both statutes are similar in that they generally seek to prevent workplace "discrimination," they are also materially dissimilar.

[HN4] USERRA and Title VII are, in a broad sense, animated by fundamentally different goals. Congress enacted Title VII "to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group." *Griggs v. Duke Power*, 401 U.S. 424, 430-31, 91 S. Ct. 849, 28 L. Ed. 2d 158 (1971). USERRA, on the other hand, states that its goals include "encourag[ing] noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service" and "minimiz[ing] the disruption to the lives of persons performing service in the uniformed services as well as to their employers." 38 U.S.C. § 4301(a). As stated in the legislative history [*6] of a predecessor statute, "If these young men are essential to our national defense, then certainly our Government and employers have a moral obligation to see that their economic well being is disrupted to the minimum extent possible." H.R. Rep. No. 1303, 89th Cong. (1966) (quoted in *Monroe v. Standard Oil Co.*, 452 U.S. 549, 561, 569, 101 S. Ct. 2510, 69 L. Ed. 2d 226 (1981)).

This evidence of legislative purpose suggests that [HN5] Congress did not enact USERRA primarily "to combat an ignorant or vicious stereotyping of [members of the armed services] as undependable employees" but intended only "to encourage people to join" the armed services. *Velasquez v. Frapwell*, 160 F.3d 389, 392 (7th Cir. 1998), vacated in part on other grounds, 165 F.3d 593 (1999) (citing *Monroe v. Standard Oil Co.*, 452 U.S. 549, 101 S. Ct. 2510, 69 L. Ed. 2d 226 (1981)). USERRA's primary focus is thus not on negative opinions of certain groups but on the reality that employers may not wish to hire employees who, as members of the armed services, could frequently be absent for long peri-

ods of time. [HN6] Because of these differing legislative purposes, evidence in a USERRA case of past discrimination under Title VII may not have the probative value it might have in a Title VII case, where [*7] "an employer's past discriminatory policy and practice may well illustrate that the employer's asserted reasons for disparate treatment are a pretext for intentional discrimination." *Hawkins v. Hennepin Tech. Ctr.*, 900 F.2d 153, 155-56 (8th Cir.), cert. denied, 498 U.S. 854, 111 S. Ct. 150, 112 L. Ed. 2d 116 (1990). There is no reason, however, to believe that unlawful discrimination against employees on the basis of race, sex, or religion necessarily correlates with discrimination on the basis of being a member of the armed services. The latter group is, for the most part, protected not as an effort to overcome the effects of historical discrimination but to ensure that citizens will not refrain from joining the armed services for fear of losing their civilian jobs. Therefore, [HN7] the court cannot categorically, that is, as a matter of law, hold that evidence of all forms of Title VII discrimination by an employer is always relevant and discoverable in an USERRA claim against that employer.

However, the court also cannot categorically hold that evidence of forms Title VII discrimination by an employer is never relevant and discoverable in an USERRA claim against that employer. For, there may circumstances--such as, for [*8] example, an employer's reticence to hire women because of concerns that they would take too much time off for child-rearing--where the comparison between USERRA and Title VII discrimination claims might bear relevance. The relevance issue must instead be decided on a case-by-case basis, and the question for a court reviewing a magistrate judge's order on the issue is whether the magistrate judge was clearly erroneous, that is, abused his discretion. Here, Dees has not shown that the magistrate judge, in the exercise of his broad discretion, was clearly erroneous in his conclusion that the information Dees seeks is not relevant to the claim or defense of any party in this case. Nowhere in the record does Dees make a specific showing to the magistrate judge of circumstances in this case where the comparison between USERRA and Title VII discrimination claims might bear relevance.

The court acknowledges that [HN8] USERRA should "be liberally construed for the benefit of those who left private life to serve their country," *Coffman v. Chugach Support Servs., Inc.*, 411 F.3d 1231, 1238 (11th Cir. 2005). But, in this case, such a liberal interpretation cannot overcome the fact that Dees has failed [*9] to show that the magistrate judge's discovery order is clearly erroneous. In other words, while evidence of other types of discrimination may be relevant in other USERRA cases, Dees has not shown that 28 U.S.C. §

2007 U.S. Dist. LEXIS 87875, *

636(b)(1)(A) and *Fed. R. Civ. P. 72(a)* warrant rejecting the magistrate judge's contrary conclusion in this case.

For the above reasons, it is ORDERED that plaintiff Jerry Leon Dees, Jr.'s objection to order (Doc. No. 39) is overruled.

DONE, this the 30th day of November, 2007.

/s/ Myron H. Thompson

UNITED STATES DISTRICT JUDGE

Exhibit N

LEXSEE 1999 US APP. LEXIS 2068

JEFFREY CHURCH, on behalf of himself and all others similarly situated, Plaintiff-Appellant, v. **CITY OF RENO**, a Municipal corporation; **ROBERT V. BRADSHAW**, in his official capacity as Chief of Police of the City of Reno and individually; **RICHARD KIRKLAND**, in his capacity as Captain in the City of Reno Police Department, and individually; **JAMES WESTON**, in his official capacity of Lieutenant of the City of Reno Police Department, and individually; **STEVEN G. TURNER**, in his official capacity as Sergeant in the City of Reno Police Department, and individually, Defendants-Appellees.

No. 97-17097

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

1999 U.S. App. LEXIS 2068

December 9, 1998, Argued and Submitted, San Francisco, California
February 9, 1999, Filed

NOTICE: [*1] RULES OF THE NINTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

SUBSEQUENT HISTORY: Reported in Table Case Format at: *1999 U.S. App. LEXIS 6724*.

PRIOR HISTORY: Appeal from the United States District Court for the District of Nevada, D.C. No. CV-83-00415-ECR. Edward C. Reed, Jr., District Judge, Presiding.

DISPOSITION: AFFIRMED.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff appealed from a decision of the United States District Court for the District of Nevada, which denied plaintiff's motion to show cause why defendants should not be held in contempt of a prior consent decree for subjecting plaintiff to a hostile work environment.

OVERVIEW: Plaintiff appealed a district court's order denying his motion to show cause why defendants should not be held in contempt of a prior consent decree for subjecting him to a hostile work environment. The consent decree prohibited acts that either violated the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C.S. § 4301 et seq., (USERRA), or

violated the specific language of the consent decree. The appellate court affirmed the district court's decision. The court found that plaintiff had pointed to no employment contract, agreement, policy, plan or practice that specifically provided the benefit of being free from caustic comments by coworkers. The court also found that the USERRA did not specifically include a non-hostile work environment in its definition of "benefit of employment." The court further found that the consent decree did not define the term "otherwise discriminate" to include protecting employees from a hostile work environment. The court held, therefore, that defendants could not be held in contempt of the consent decree for failing to protect plaintiff from the caustic comments of his coworkers.

OUTCOME: The appellate court affirmed a district court decision, which denied plaintiff's motion to show cause why defendants should not be held in contempt of a prior consent decree for subjecting plaintiff to a hostile work environment. The court held that the consent decree did not include protecting plaintiff from caustic comments by coworkers.

CORE TERMS: consent decree, work environment, hostile, contempt, coworkers, caustic, reemployment, uniformed, discriminate, specific language, employment contract, notoriously, ambiguous, specifically provides

LexisNexis(R) Headnotes

1999 U.S. App. LEXIS 2068, *

Civil Procedure > Judgments > Entry of Judgments > Consent Decrees***Labor & Employment Law > Affirmative Action > Consent Decrees***

[HN1] The consent decree is an injunction. It must therefore be specific in terms and describe in reasonable detail the acts sought to be restrained.

Civil Procedure > Judgments > Entry of Judgments > Consent Decrees***Labor & Employment Law > Affirmative Action > Consent Decrees***

[HN2] Specificity in the terms of consent decrees is a predicate to a finding of contempt.

Civil Procedure > Judgments > Entry of Judgments > Consent Decrees***Labor & Employment Law > Affirmative Action > Consent Decrees***

[HN3] If a consent decree does not clearly describe the prohibited conduct, it is not enforceable by contempt.

Labor & Employment Law > Affirmative Action > Enforcement***Military & Veterans Law > Veterans > Benefits > Employment******Pensions & Benefits Law > Equal Protection > Veterans***

[HN4] In 1994 the Veterans Reemployment Retirement Rights Act, 38 U.S.C.S. § 2021 was replaced by the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C.S. § 4301 *et seq.*

Labor & Employment Law > Affirmative Action > Enforcement***Military & Veterans Law > Veterans > Benefits > Employment******Pensions & Benefits Law > Equal Protection > Veterans***

[HN5] The Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C.S. § 4301 *et seq.*, provides that persons serving in the uniformed services shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of their membership in the uniformed services. See 38 U.S.C.S. § 4311(a).

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Coverage & Definitions***Military & Veterans Law > Veterans > Benefits > Employment******Pensions & Benefits Law > Employee Benefit Plans > Employee Stock Ownership Plans***

[HN6] The Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C.S. § 4301 *et seq.*, defines "benefit of employment" as: any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment. See 38 U.S.C.S. § 4303(2).

Civil Procedure > Judgments > Entry of Judgments > Consent Decrees***Environmental Law > Litigation & Administrative Proceedings > Consent Decrees******Labor & Employment Law > Affirmative Action > Consent Decrees***

[HN7] To hold a party in contempt, the prohibitions of a consent decree must be clear enough that those who must obey them know what the court intends to require and what it means to forbid.

Labor & Employment Law > Discrimination > Title VII of the Civil Rights Act of 1964 > Amendments

[HN8] The term "discrimination" is notoriously ambiguous. In the context of Title VI actions, the precise meaning of the term has generated more than 30 years of litigation.

COUNSEL: For JEFFREY CHURCH, Plaintiff - Appellant: James Andre Boles, Esq., Reno, NV.

For CITY OF RENO, ROBERT V. BRADSHAW, RICHARD KIRKLAND, JAMES WESTON, STEVEN G. TURNER, Defendants - Appellees: Donald L. Christensen, Esq., Reno, NV.

JUDGES: Before: D.W. NELSON, RYMER, and T.G. NELSON, Circuit Judges.

OPINION**MEMORANDUM¹**

1999 U.S. App. LEXIS 2068, *

1 This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by *Ninth Circuit Rule 36-3*.

Jeffrey Church appeals the district court's order denying his motion to show cause why the City of Reno and certain City employees should not be held in contempt of a 1987 consent decree for subjecting Church [*2] to a hostile work environment. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm the district court.

[HN1] "The consent decree is an injunction." *Gates v. Shinn*, 98 F.3d 463, 468 (9th Cir. 1996). It must therefore be "specific in terms and describe 'in reasonable detail' the acts sought to be restrained." *Id.* at 467. [HN2] "Specificity in the terms of consent decrees is a predicate to a finding of contempt." *Id.* [HN3] "If [a consent decree] does not clearly describe [the] prohibited . . . conduct, it is not enforceable by contempt." *Id.*

The consent decree at issue in the present case prohibits acts that either (1) violate the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 *et seq.* ("USERRA")²; or (2) violate the specific language of the consent decree.

2 The consent decree actually incorporates by reference the Veterans Reemployment Rights Act, 38 U.S.C. § 2021 ("VRRRA"). [HN4] In 1994 the VRRRA was replaced by the USERRA. The district court held that the USERRA rather than the VRRRA applies to this case, and neither party has appealed that holding. We therefore apply the USERRA rather than the VRRRA.

[*3] A. *The USERRA*

[HN5] The USERRA provides that persons serving in the uniformed services "shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of" their membership in the uniformed services. 38 U.S.C. § 4311(a) (emphasis added). Church argues that the City should be held in contempt of the consent decree because it violated the USERRA's prohibition against denying a "benefit of employment" when it subjected Church to a hostile work environment.

[HN6] The USERRA defines "benefit of employment" as:

any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues by reason of an *employment contract or agreement or an employer policy,*

plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

38 U.S.C. § 4303(2) (emphasis added).

Church has pointed to no "employment contract or [*4] agreement or an employer policy, plan, or practice" that specifically provides the "benefit" of being free from caustic comments by coworkers. *See id.* Rather, analogizing to other antidiscrimination statutes, Church argues that the term "benefit of employment" should be interpreted to include freedom from a hostile work environment.

We need not reach the issue of whether a hostile work environment claim is cognizable under the statute, however, because [HN7] to hold a party in contempt, the prohibitions of a consent decree must be clear enough that "those who must obey them will know what the court intends to require and what it means to forbid." *Gates*, 98 F.3d at 468. While the consent decree prohibits violations of reservists' statutory rights, the USERRA does not specifically include a nonhostile work environment in its definition of "benefit of employment." In addition, neither the Ninth Circuit nor the U.S. Supreme Court has interpreted either the USERRA or the VRRRA to create liability for a hostile work environment. The City cannot, therefore, be held in contempt of the consent decree for failing to protect Church from the caustic comments of his coworkers.³

3 We recognize that the Merits Systems Protection Board has interpreted the USERRA to create liability for a hostile work environment. *See Petersen v. Department of Interior*, 71 M.S.P.R. 227 (1996). The M.S.P.B.'s interpretation of the USERRA is not, however, binding on the City.

[*5] B. *The Specific Language of the Consent Decree*

The consent decree itself specifically provides that the City will not "terminate, demote, punish, restrict or withhold accrual of benefits . . . or otherwise discriminate against an employee as a result of his participation in the Military Reserve or National Guard." Church argues that the City should be held in contempt of the consent decree because the language "otherwise discriminate" includes a prohibition on hostile work environments. We disagree.

1999 U.S. App. LEXIS 2068, *

The consent decree does not define the term "otherwise discriminate" to include protecting employees from a hostile work environment, or otherwise indicate that the City was required to protect employees from caustic comments by coworkers. Moreover, nothing in the prior lawsuit or proceedings that resulted in the consent decree mentions "hostile work environment" or otherwise indicates that the parties intended the consent decree to include a prohibition on caustic comments by coworkers.

Finally, as we recently recognized, [HN8] the term "discrimination" is "notoriously ambiguous." *See Mon-*

teiro v. Tempe Union High Sch. Dist., 158 F.3d 1022, 1033 (9th Cir. 1998). In the context [*6] of Title VI actions, the precise meaning of the term has generated "more than thirty years of litigation." *Id.* The City cannot be held in contempt of the consent decree for failing to interpret this "notoriously ambiguous" term to include a duty to protect Church from a hostile work environment. *See Gates*, 98 F.3d at 467-68.

AFFIRMED.



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Not Reported in F.Supp., 1992 WL 150160 (M.D.Ga.), 58 Fair Empl.Prac.Cas. (BNA) 817

(Cite as: **Not Reported in F.Supp.**)

McKie v. Miller Brewing Co.
M.D.Ga., 1992.

United States District Court, M.D. Georgia, Albany
and Americus Divisions.

David W. McKIE and James Donald Harris,
Plaintiffs,

v.

MILLER BREWING COMPANY, Defendant.
Civ. No. 90-46-ALB/AMERDF.

March 6, 1992.

James Norman Finkelstein, Albany, Ga., for
plaintiffs.

John M. Capron, Burton Freeman Dodd, James
Edward Rollins, Jr., Atlanta, Ga., for defendant.

ORDER

FITZPATRICK, District Judge.

*1 Pending before the court is a series of motions, including, most importantly, the defendant's motion for summary judgment. Before this motion can be examined, however, the court must consider the defendant's motion to strike the plaintiff's response as untimely.

During a telephone conference on June 21, 1991, the court allowed the defendant fifteen days, including the July 4 holiday, to file its motion for summary judgment. The plaintiffs were given twenty-four days to respond in order to accommodate plaintiffs' counsel's desire for a two-week vacation. The defendant was then given until August 15 to reply.

The defendant timely filed its motion. Afterwards, during a July 10 deposition, plaintiffs' counsel requested defense counsel to agree to an extension. The request was denied. The plaintiffs filed no motion requesting an extension with the court, nor did they ask the court reporter to expedite the transcription of the deposition. The plaintiffs did not file their response within the time period allowed, and in fact made no response until receiving a letter from defense counsel drawing the court's attention to their inaction. Plaintiff's counsel contacted Ms. Wanda Donihoo, the undersigned judge's courtroom deputy, and asked for an extension. Ms. Donihoo tentatively granted the extension contingent upon the

court's approval. Plaintiffs' counsel then filed a response which can only be read as assuming that approval had been granted. A motion for an extension of time was not filed until *after* the response was sent.

While these circumstances would certainly justify striking the plaintiffs' response, the court will not do so. In an abundance of generosity and out of a desire to reach the merits of this case, however, the court will give plaintiff's counsel the benefit of the doubt. While it is evident that he has failed to meet with the court's deadline, failed to comply with the Federal Rules of Civil Procedure and failed to offer a sufficient explanation for his actions, the court will nonetheless deny the defendant's motion to strike and consider the plaintiffs' response.

The standards for considering a motion for summary judgment are well known. Under Rule 56(c) of the Federal Rules of Civil Procedure, the party moving for summary judgment bears the initial burden of showing there are no genuine issues of material fact that should be decided at trial and that it is entitled to judgment as a matter of law. When this has been done, the burden shifts to the non-moving party to demonstrate that there is indeed a material issue of fact or law precluding summary judgment. Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir.1991). Where relevant facts are in controversy, "all reasonable doubts ... are to be resolved and all inferences ... are to be drawn in favor of the party opposing the motion." Mack v. W.R. Grace Co., 578 F.Supp. 626, 630 (N.D.Ga.1983). After considering the law and the facts, the court has decided to grant the motion.

BACKGROUND

*2 Plaintiffs David W. McKie and James Donald Harris, white males, are former employees of the defendant. Both worked as instrument technicians at Miller's plant in Albany, Georgia. Miller is a federal contractor as specified in Executive Order 11,246, and so has an affirmative action plan. Miller's production and maintenance employees are represented by Local 2699 of the International Association of Machinists and Aerospace Workers, AFL-CIO. The plaintiffs were not covered by this

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(Cite as: Not Reported in F.Supp.)

collective bargaining agreement, but were at-will employees under Georgia law. (Potratz Affidavit, paras. 3, 5, attached to Defendant's Reply in Support of Summary Judgment).

At about 3:30 a.m. on October 28, 1988, John P. Jones, a Miller Instrumentation Supervisor, found McKie asleep in a control room. McKie was found in a chair with his feet propped up behind a control panel. The door to the control room was locked, but this was in accord with normal procedures. McKie admitted that he had committed the violation. (McKie Depo., pp. 15-17). Following an investigation, Miller terminated McKie under a plant rule prohibiting the misuse of time, including sleeping on the job. McKie was replaced by a black male. (Potratz Aff., paras. 8-11).

At about 5:00 a.m. on March 18, 1988, David Adcock, a Miller Maintenance Supervisor, found Harris asleep in a control room behind a barricaded door. Adcock awakened Harris and immediately suspended him. Harris denied that he was asleep. (Harris Depo., pp. 24-25). Following an investigation, Harris was also discharged for an intentional misuse of time. He was replaced by a white female. (Potratz Aff., paras. 13-17; Smith Aff., paras. 3-6).

The plaintiffs are the only employees not covered by the collective bargaining agreement Miller has discovered sleeping on the job and discharged. (Potratz Aff., para. 11). Other employees, covered by the union's bargaining agreement, were suspended when caught sleeping.

The plaintiffs then filed complaints with the Equal Employment Opportunity Commission. On January 2, 1990, the EEOC determined that there was no discrimination in McKie's termination. On March 14, 1990, the EEOC issued a right-to-sue letter to Harris at his request, pre-empting the agency's consideration of his claim. (Exhibits to Potratz Aff.).

The plaintiffs then filed this lawsuit under Title VII of the Civil Rights Act of 1964, [42 U.S.C. § 2000e](#), *et seq.* They allege that Miller fired them while other employees guilty of the same offense were merely suspended. They contend that Miller discriminated against them due to their race and sex in order to replace them with minority or female workers in accord with its affirmative action plan.

DISCUSSION

It is important to distinguish between the two theories of this case. Miller contends that this is a case of allegedly discriminatory discipline. The plaintiffs claim they are proceeding under [United Steelworkers of America v. Weber](#), 443 U.S. 193, 99 S.Ct. 2721, 61 L.Ed.2d 480 (1979), where the Supreme Court upheld the affirmative action plan in question in part by noting that it did not require the discharge of white workers and their replacement with minorities. [443 U.S. at 208, 99 S.Ct. at 2730](#). The plaintiffs contend that this is exactly what happened to them, i.e. they were fired for an offense usually resulting in a suspension in order to make room for minorities and women under Miller's affirmative action plan.

*3 The plaintiffs cannot make a case under *Weber* and there is no need to undertake an examination of Miller's affirmative action plan. Even under *Weber*, the plaintiffs bear the burden of making out a prima facie case of discrimination using the framework given in [McDonnell Douglas Corp. v. Green](#), 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). The criteria for judging an affirmative action plan given in *Weber* come into play only if an employer uses the plan as a justification for its decision. [Johnson v. Transp. Agency](#), 480 U.S. 616, 625-27, 107 S.Ct. 1442, 1448-47, 94 L.Ed.2d 615 (1987). Here, Miller has not raised the plan as a justification for its actions and even if it had the plaintiffs would still have to show a prima facie case in order to attack the plan in support of their own theory.

In a disparate treatment case such as this one, the plaintiffs bear the ultimate burden of showing that the defendant acted with a discriminatory purpose. The plaintiffs must first establish a prima facie case, after which the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for its actions. The plaintiffs may then present evidence to show that the employer's reason is pretextual or that a discriminatory reason was more likely than not the cause of the employer's actions. [Nix v. WLCY Radio/Rahall Communications](#), 738 F.2d 1181, 1184 (11th Cir.1984). In this case, the plaintiffs have failed to establish a prima facie case of discrimination to support any of their claims.

1. A Prima Facie Case

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(Cite as: Not Reported in F.Supp.)

In order to establish a prima facie case, the Eleventh Circuit has held that:

in cases involving alleged racial bias in the application of discipline for violation of work rules, the plaintiff, in addition to being a member of a protected class, must show either (a) that he did not violate the work rule, or (b) that he engaged in misconduct similar to that of a person outside the protected class, and that the disciplinary measures enforced against him were more severe than those enforced against the other persons who engaged in similar misconduct.

Jones v. Gerwens, 874 F.2d 1534, 1539-40 (11th Cir.1989).

Leaving aside the question of whether they are in a protected class,^{FNI} the plaintiffs cannot meet either of the *Gerwens* tests. McKie admits that he was asleep on the job. (McKie Depo., pp. 15-17). Although Harris denied being asleep (Harris Depo., pp. 24-25), Miller's investigation led it to believe otherwise. (Potratz Aff., paras. 8-11, 13-17; Smith Aff., paras. 3-6). There is no reason to believe that Miller's belief was not held in good faith, meaning that Miller has successfully rebutted any possible prima facie case established by Harris under this part of *Gerwens*. "The law is clear that, even if a Title VII claimant did not in fact commit the violation with which he is charged, an employer successfully rebuts any prima facie case of disparate treatment by showing that it honestly believed the employee committed the violation." Gerwens, 874 F.2d at 1540. The first *Gerwens* test is therefore unsatisfied by either plaintiff.

*4 The second *Gerwens* test is analogous to a requirement that the plaintiffs show that similarly situated employees were treated differently than they were. They cannot do this, however, because it is uncontested that the other employees caught sleeping on the job were union members covered by a collective bargaining agreement while the plaintiffs had no such protection. The law is unequivocal that in a Title VII race discrimination claim, "[f]irst and foremost, because of their unique status in the workplace, bargaining unit employees are *never* similarly situated with non-bargaining unit employees." Marshall v. Western Grain Co., Inc., 838 F.2d 1165, 1170 (11th Cir.1988), cert. denied, 488 U.S. 852, 109 S.Ct. 137, 102 L.Ed.2d 110 (1988) (emphasis in original).

The reason for the distinction is clear. An employer must often go through a complex process in order to discipline an employee covered by a collective bargaining agreement which frequently involves grievance and appeal procedures. See, Marshall, 838 F.2d at 1170-71. At-will employees, by contrast, may be disciplined or discharged for virtually any reason, subject to a few exceptions such as discrimination. "Title VII does not take away an employer's right to interpret its rules as it chooses, and to make determinations as it sees fit under those rules." Nix, 738 F.2d at 1187. Because of this fundamental difference, employees in these two groups are never similarly situated and cannot be compared in Title VII lawsuits to show discrimination. The only employees with whom the plaintiffs could compare themselves would be others not protected by the collective bargaining agreement, but there has been no evidence of this nature.

Likewise, the plaintiffs were not similarly situated to the other employees caught sleeping on the job because it appears that the supervisory decisionmakers were different. "[D]isciplinary measures undertaken by different supervisors may not be comparable for purposes of Title VII analysis." Gerwens, 874 F.2d at 1541.

2. A Legitimate, Non-discriminatory Reason

Alternatively, if by some chance the plaintiffs could be considered to have established a prima facie case, there is no doubt that Miller has successfully rebutted it. It is not contested that McKie was sleeping on the job or that Miller honestly believed that Harris had been. Miller conducted an extensive investigation before reaching these conclusions. Sleeping on the job is without doubt a legitimate, non-discriminatory reason for discharging employees.

3. Pretext

Finally, there is absolutely no reason to believe that Miller's reason for discharging the plaintiffs was pretextual. The mere existence of Miller's affirmative action plan is in no way evidence of discrimination, Christensen v. Equitable Life Assurance Soc'y, 767 F.2d 340, 343 (7th Cir.1985), cert. denied, 474 U.S. 1102, 106 S.Ct. 885, 88 L.Ed.2d 920 (1986), and the plaintiffs' attempts to compare themselves with other employees prove nothing since they and the other workers are not similarly situated.

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CONCLUSION

*5 The remainder of the arguments raised by the plaintiffs are immaterial to the questions at hand. They have not carried their burden and their case cannot survive. The defendant's motion to strike is DENIED. The defendant's motion for summary judgment is GRANTED. The remaining motions are moot.

SO ORDERED.

[FN1.](#) The defendant has contended that since the plaintiffs are white males, they should be required to show evidence of background circumstances giving rise to an inference of discrimination in lieu of showing minority status. There is a split of authority on this question. [Lucas v. Dole, 835 F.2d 532, 534 n. 9 \(4th Cir.1987\).](#) Although no Eleventh Circuit authority has been presented to the court to resolve this matter, it is of no major importance since the plaintiffs have failed to make a prima facie case even if this factor were to be counted in their favor.

M.D.Ga.,1992.

McKie v. Miller Brewing Co.

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HYUNDAI

Motor Manufacturing Alabama, LLC
700 Hyundai Blvd.
Montgomery, AL 36105

February 26, 2007

Jerry Leon Dees
[REDACTED]
[REDACTED]

Dear Leon:

It has been brought to my attention on February 14, 2007 you were found, by a member of HMMA management, in the third floor overhead sleeping.

HMMA policy states, "Serious and excessive violations of HMMA's performance standards", is a serious misconduct violation. When a person commits such an action against HMMA and/or his/her fellow Team Members, he/she may be terminated from employment. HMMA considers your action to be in violation of the aforementioned policy.

Based on the aforementioned, I regret that I have no alternative but to terminate your employment, effective immediately.

Sincerely,

A handwritten signature in cursive script that reads "Wendy Warner".

Wendy Warner
Manager, Employment
Hyundai Motor Manufacturing Alabama, LLC